

☐ Expedite
☒ Hearing is set
Date: March 20, 2026
Time: 9:00 AM
Judge/Calendar: C. Lanese

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY**

STATE SENATOR NIKKI TORRES, in Her
Official Capacity; STATE REPRESENTATIVE
MARY DYE, in Her Official Capacity;
WASHINGTON POLICY CENTER, a nonprofit
corporation; and TODD MYERS,

Plaintiffs,

v.

WASHINGTON DEPARTMENT OF ECOLOGY
and WASHINGTON DEPARTMENT OF
COMMERCE,

Defendants.

No. 25-2-04445-34

**PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND
MEMORANDUM IN SUPPORT**

MOTION FOR SUMMARY JUDGMENT

Plaintiffs State Senator Nikki Torres, State Representative Mary Dye (together, "Plaintiff Lawmakers"); Washington Policy Center ("WPC"); and James Todd Myers (all together, "Plaintiffs"), by and through Counsel of Record Jackson W. Maynard Jr. and Sam Spiegelman, and in accordance with Civil Rule ("CR") 56, hereby respectfully move the Court to **GRANT** Plaintiffs' requests for summary judgment, writ of mandamus and declaratory judgment or such order, in the alternative, via application of the Administrative Procedure Act ("APA"), compelling Defendants Washington Department of Ecology ("Ecology") and Washington Department of Commerce ("Commerce") (together, "Defendants" or "Defendant Agencies") to produce a report

1 that complies, in all respects, with RCW 70A.45.020, as-amended in 2025 through passage of
2 Senate Bill 5036 (Ex. 1). This Motion is based on the following Memorandum in Support.

3 **MEMORANDUM IN SUPPORT OF THE MOTION**

4 **I. FACTUAL BACKGROUND**

5 Ecology and Commerce are together mandated by the Washington State Legislature to
6 report the total statewide emissions of greenhouse gases for the preceding two (2) years by
7 December 31 of each even-numbered year. RCW 70A.45.020. Defendant Agencies failed to do
8 either. Ex. 2, Pet. for Writ of Mandamus & Decl. Judgment or, in the Alternative, Pet. for Judicial
9 Review Under the APA.

10 **II. EVIDENCE RELIED UPON**

11 Public information alongside communications Plaintiff exchanged with Defendant
12 Agencies requesting clarification on their failure to comply with RCW 70A.45.020. This Motion
13 is supported by the Verified Petition for Writ of Mandamus & Decl. Judgment or, in the
14 Alternative, Pet. for Judicial Review Under the APA, legislative history publicly available through
15 the Washington State Legislative website and all documents and pleadings on file with the Court
16 in this matter.

17 **III. ISSUE PRESENTED**

- 18 1. Whether Defendant Agencies failed to comply with RCW 70A.45.020.
- 19 2. Whether Plaintiffs are entitled to declaratory judgment.
- 20 3. Whether Plaintiffs are entitled to a writ of mandamus.
- 21 4. Whether Plaintiffs are entitled to alternative relief pursuant to the APA.

22 **IV. LEGAL AUTHORITY**

23 **A. Summary Judgment is appropriate here.**
24

1 “Summary judgment is appropriate ‘if the pleadings, depositions, and admissions on file,
2 together with the affidavits, if any, show that there is no genuine issue as to any material fact and
3 that the moving party is entitled to a judgment as a matter of law.’” *Hartley v. Washington*, 103
4 Wn.2d 768, 774, 698 P.2d 77 (1985) (quoting CR 56(c); *Herskovits v. Grp. Health Coop.*, 99
5 Wn.2d 609, 613, 664 P.2d 474 (1983). “A material fact is one upon which the outcome of the
6 litigation depends, in whole or in part.” *Vacova Co. v. Farrell*, 62 Wn. App. 386, 395, 814 P.2d
7 255 (1991) (citing *Riste v. E. Wash. Bible Camp, Inc.*, 25 Wn. App. 299, 303, 605 P.2d 1294.
8 Here, summary judgment is appropriate. There is no genuine dispute of material fact. Accordingly,
9 Plaintiff is entitled to summary judgment in the form of a writ of mandamus relief and declaratory
10 relief or in the alternative judicial review under the Administrative Procedure Act and other relief
11 that may follow from entry of a declaratory judgment and all other relief sought in Plaintiff’s
12 Petition, including reasonable attorney’s fees, expenses, and costs.

13 **B. Defendants violated state law.**

14 RCW 70A.45.020 provides as follows:

15 *Greenhouse gas emissions reductions—Reporting requirements.*

16 *(1)(a) The state shall limit anthropogenic emissions of greenhouse gases to achieve
the following emission reductions for Washington state:*

17 *(i) By 2020, reduce overall emissions of greenhouse gases in the state to 1990
levels, or ninety million five hundred thousand metric tons;*

18 *(ii) By 2030, reduce overall emissions of greenhouse gases in the state to fifty
million metric tons, or forty-five percent below 1990 levels;*

19 *(iii) By 2040, reduce overall emissions of greenhouse gases in the state to twenty-
seven million metric tons, or seventy percent below 1990 levels;*

20 *(iv) By 2050, reduce overall emissions of greenhouse gases in the state to five
million metric tons, or ninety-five percent below 1990 levels.*

21 *(b) By December 1, 2008, the department shall submit a greenhouse gas reduction
plan for review and approval to the legislature, describing those actions necessary
22 to achieve the emission reductions in (a) of this subsection by using existing
23 statutory authority and any additional authority granted by the legislature. Actions*
24

1 taken using existing statutory authority may proceed prior to approval of the
2 greenhouse gas reduction plan.

3 (c) In addition to the emissions limits specified in (a) of this subsection, the state
4 shall also achieve net zero greenhouse gas emissions by 2050. Except where
5 explicitly stated otherwise, nothing in chapter 14, Laws of 2008 limits any state
6 agency authorities as they existed prior to June 12, 2008.

7 (d) Consistent with this directive, the department shall take the following actions:

8 (i) Develop and implement a system for monitoring and reporting emissions of
9 greenhouse gases as required under RCW 70A.15.2200; and

10 (ii) Track progress toward meeting the emission reductions established in this
11 subsection, including the results from policies currently in effect that have been
12 previously adopted by the state and policies adopted in the future, and report on
13 that progress. Progress reporting should include statewide emissions as well as
14 emissions from key sectors of the economy including, but not limited to, electricity,
15 transportation, buildings, manufacturing, and agriculture.

16 (e) Nothing in this section creates any new or additional regulatory authority for
17 any state agency as they existed prior to January 1, 2019.

18 **(2) By December 31st of each even-numbered year beginning in 2010, the
19 department and the department of commerce shall report to the governor and the
20 appropriate committees of the senate and house of representatives the total
21 emissions of greenhouse gases for the preceding two years, and totals in each
22 major source sector, including emissions associated with leaked gas identified by
23 the utilities and transportation commission under RCW 81.88.160. The report
24 must include greenhouse gas emissions from wildfires, developed in consultation
with the department of natural resources. The department shall ensure the
reporting rules adopted under RCW 70A.15.2200 allow it to develop a
comprehensive inventory of emissions of greenhouse gases from all significant
sectors of the Washington economy.**

(3) Except for purposes of reporting, emissions of carbon dioxide from industrial
combustion of biomass in the form of fuel wood, wood waste, wood by-products,
and wood residuals shall not be considered a greenhouse gas as long as the
region's silvicultural sequestration capacity is maintained or increased. [emphasis
added]

Id.

Further, the intent statement included in the legislation comprising the statute is also
instructive:

**Intent—2020 c 79: "(1) Global climate change represents an existential threat to
the livelihoods, health, and well-being of all Washingtonians. Our state is
experiencing a climate emergency in the form of devastating wildfires, drought,
lack of snowpack, and increases in ocean acidification caused in part by climate
change.**

1 *(2) These threats are not distributed evenly across the state. In particular, rural*
2 *communities with natural resource-based economies, tribes, and communities of*
3 *lower and moderate incomes will be disproportionately exposed to health and*
4 *economic impacts driven by climate change.*

5 *(3) The longer we delay in taking definitive action to reduce greenhouse gas*
6 *emissions, the greater the threat posed by climate change to current and future*
7 *generations, and the more costly it will be to protect and maintain our*
8 *communities against the impacts of climate change. Unchecked, climate change*
9 *will bring ever more drastic decline to the health and prosperity of future*
10 *generations, particularly for the most vulnerable communities. [emphasis*
11 *added].*

12 Defendant Agencies' noncompliance with the letter of the law also impacts its spirit, as it
13 betrays a nonchalance that contrasts, starkly, with the dire language set forth above.

14 **V. LEGAL ARGUMENT**

15 **A. DEFENDANTS ARE IN VIOLATION OF RCW 70A.45.020**

16 Since midnight on January 1, 2025, Defendant Agencies remain in direct violation of RCW
17 70A.45.020. Ecology released the gas-emissions report *five days late*—on January 6, 2025—and
18 *omitted* numbers from 2022 and 2023, the two (2) preceding years. The Legislature entrusted these
19 agencies to meet the mandated deadline. Defendant Agencies failed to do so and then took none
20 of the prescribed mitigative efforts, failing to formally request an extension nor providing notice
21 or explanation for the delay.

22 **B. DECLARATORY JUDGMENT AND WRIT OF MANDAMUS**

23 **1. Declaratory Judgment**

24 Plaintiffs have rights, status, and other legal relations that are affected by the requirements
in RCW 70A.45.020(2) and therefore seek to have determined a question of construction or
validity arising under the statute and to obtain a declaration of rights, status, or other legal relations
thereunder. *See, e.g., Stevens Cnty. v. Stevens Cnty. Sheriff's Dep't*, 20 Wash.App.2d 34, 40–41
(citing *Clallam Cnty. Deputy Sheriff's Guild v. Bd. Of Clallam Cnty. Comm'rs*, 92 Wash.2d 844,

1 848, 601 P.2d 943 (1979)). Pursuant to Chapter 7.24 RCW, the Uniform Declaratory Judgment
2 Act (“UDJA”), Plaintiffs respectfully ask this Court to declare that Defendant Agencies are
3 obligated to comply with the clear mandatory language in the law and have failed to do so.
4 70A.45.020(2).

5 In *McCleary v. State*, 173 Wash.2d 477, 269 P.3d 227 (2012), the Washington Supreme
6 Court held that the state-constitutional command that “it is the paramount duty of the state to make
7 ample provision for the education of all children residing within its borders” compelled the
8 Legislature to “develop a basic education program geared toward delivering the constitutionally
9 required education . . .” *Id.* at 547 (citing Wash. Const. art. IX, §1). If the Court’s declaratory-
10 judgment authority extends to the legislative branch’s exercise of its constitutional duties, it most
11 certainly must also cover a subservient agency’s compliance with that branch’s statutory
12 directives. Five (5) years later, the Court determined that the state’s responsive actions still failed
13 to comply with the constitutional directive. *McCleary v. State*, 2017 WL 11680212 (Wash. Nov.
14 15, 2017). This follow-up demonstrates Washington courts must not simply *inform* another branch
15 or an agency of its constitutional and statutory responsibilities but are fully within their powers to
16 determine whether the actions or forbearances taken in response are indeed corrective.

17 *McCleary* is not alone. Other cases illustrate that the courts’ declaratory-judgment powers
18 extend to confirming the Legislature’s constitutional and agency’s statutory obligations. They
19 extend to the resolution of disputes over constitutional, statutory, or contractual language that, in
20 dispute, affects or denies some benefit to which the moving party is otherwise entitled. *Federal*
21 *Way Sch. Dist. No. 210 v. State*, 167 Wash.2d 514, 528, 219 P.3d 941 (2009) (citing *Walker v.*
22 *Munro*, 124 Wash.2d 402, 419, 879 P.2d 920 (1994)).

2. *Writ of Mandamus*

Once the Court renders a declaratory judgment regarding Defendant Agencies' statutory responsibilities, Plaintiffs respectfully ask this Court to then compel the performance of an act—Defendants' compliance with RCW 70A.45.020(2)—which the law especially enjoins as a duty resulting from an office, trust or station; or, to compel the admission of Plaintiffs to the use and enjoyment of a right or office to which he/she is entitled, and from which the party is being unlawfully precluded by Defendants. There is no plain, speedy, and adequate remedy in the ordinary course of law.

RCW 7.16.160 explicitly authorizes the issuance of a writ of mandamus "to compel the performance of an act which the law especially enjoins as a duty." RCW 7.16.160 clarifies that the writ is available where "there is not a plain, speedy, and adequate remedy in the ordinary course of law." As detailed below, Plaintiffs lack such a remedy. RCW 7.16.170 reinforces this point, stating that the writ "must be issued" upon affidavit by the "party beneficially interested" when there is no other adequate legal remedy. Waiting, perhaps indefinitely, for an agency to act as a statute requires is not a reasonable or adequate remedy at law. *See, e.g., Eugster v. City of Spokane*, 118 Wn. App. 383, 404, 76 P.3d 741 (2003) ("Mandamus is appropriate to compel a government official or entity 'to comply with law when the claim is clear and there is a duty to act.'") (quoting *In re Pers. Restraint of Dyer*, 143 Wash.2d 384, 398, 20 P.3d 907 (2001)).

Courts may compel an agency to perform if an action or forbearance so ordered is not merely administrative *and* is a mandatory duty—that is, that the duty is "ministerial" and not "discretionary in nature." *Brown v. Owen*, 165 Wash.2d 706, 724–25 (2009) (internal citations omitted). Put another way, "the remedy of mandamus contemplates the necessity of indicating the precise thing to be done." *Walker*, 124 Wash.2d at 407 (internal citations omitted). What is to be

1 done, in turn, is any duty that “exists at the time the writ is sought.” *Id.* at 409. *Hamilton v. Cohn*,
2 1 Wash.2d 54, 58–59 (1939). (“The duty to be enforced by mandamus must be one which exists
3 at the time when the application for the writ is made. The writ will not issue in anticipation of a
4 supposed omission of duty, but it must appear that there has been an actual default in the
5 performance of a clear legal duty then due at the hands of the party against whom relief is sought.”).
6 So, while the exercise of the mandamus power is “extraordinary”—since it involves one branch
7 telling another branch what to do— “[w]hen the law *requires* a government official to take a
8 particular action, we have the power to issue a writ of mandamus to say so.” *Colvin v. Inslee*, 195
9 Wash.2d 879, 892, 467 P.3d 953 (2020) (emphasis added). “In this way,” the Court put it
10 “mandamus is equally a command of the law” as it is a “command of this [C]ourt.” *Id.* *SEIU*
11 *Healthcare 775NW v. Gregoire*, 168 Wash.2d 593, 599, 229 P.3d 774 (2010) (“[M]andamus may
12 not be used to compel the performance of act or duties which involve discretion on the part of a
13 public official.”) (quoting *Walker*, 124 Wash.2d at 410).

14 Again, Defendant Agencies’ obligations under RCW 70A.45.020(2) are crystal clear. They
15 are mandatory rather than discretionary:

16 ***“By December 31st of each even-numbered year beginning in 2010, the department [of*
17 *ecology] and the department of commerce shall report to the governor and the*
18 *appropriate committees of the senate and house of representatives the total emissions of*
19 *greenhouse gases for the preceding two years . . .”***

20 *Id.*

21 The use of “shall” in relevant statutes creates a mandatory duty unless contrary legislative
22 intent is shown. *Spokane Cnty. v. Growth Mgmt. Hear. Bd.*, 28 Wash.App.2d 86, 94, 534 P.3d
23 1203 (“The term ‘shall’ in a statute ‘is presumptively imperative and operates to create a duty. . .
24 . unless a contrary legislative intent is apparent.’”) (quoting *Erection Co. v. Dep’t of Lab. & Indus.*,
121 Wash.2d 513, 518, 852 P.2d 288 (1993), in which the Supreme Court held as unambiguous

1 the “30-day time period” in which the Defendant Agencies were permitted to exercise its
2 jurisdiction).

3 This provision is not remotely ambiguous, nor does it provide any discretion on the part of
4 Defendant Agencies. It states, plainly, that a report *shall* issue by December 31 of each even-
5 numbered year—which Defendant Agencies failed to do—and, even more impactful from a
6 public-import perspective, the Report published almost one (1) week late still does not include
7 figures from “the preceding two years”—that is, 2022 and 2023. As such, a writ of mandamus
8 directing Defendant Agencies to do what the law already requires is well within the mandamus
9 powers of the courts.

10 C. ADMINISTRATIVE PROCEDURE ACT (*IN THE ALTERNATIVE*)

11 In the alternative, if the Court determines that the UDJA does not apply, Plaintiffs assert
12 that Defendants’ failure to fulfill their obligations under RCW 70A.45.020(2) is actionable under
13 RCW 34.05.570 of the APA, which provides, in relevant part, that “[a] person whose rights are
14 violated by an agency's failure to perform a duty that is required by law to be performed may file
15 a petition for review pursuant to RCW 34.05.514, seeking an order pursuant to this subsection
16 requiring performance.” *Id.* at (4)(b). RCW 7.24.146 (providing that the UDJA “does not apply to
17 state agency action reviewable under chapter 34.05 RCW”).

18 1. *Other Agency Action*

19 First and foremost, RCW 34.05.570(4) provides for redress of an “other agency action”
20 that is not subject to *id.* at (2) and (3)—*i.e.*, does not involve the validity of a rule or an agency
21 order in an administrative proceeding—and/or violates a person’s rights, resulting from “an
22 agency’s failure to perform a duty that is required by law to be performed . . .” *Id.* An “other agency
23 action” includes inaction. *Hillis v. Dep’t of Ecol.*, 131 Wash.2d 373, 381, 932 P.2d 139 (1997)

1 (“The APA sets out somewhat different standards for judicial review depending on whether the
2 agency action being reviewed pertains to (1) rules, (2) adjudicative proceeding, or (3) other agency
3 action, including inaction. Agency inaction (such as Ecology's failure to act on the Hillis
4 applications) is judicially reviewed by a petition filed pursuant to RCW 34.05.570(4)(b).”) *See*
5 RCW 34.05.570(4)(b) (“A person whose rights are violated by an agency's *failure to perform a*
6 *duty that is required by law* to be performed may file a petition for review pursuant to RCW
7 34.05.514, seeking an order pursuant to this subsection requiring performance.”) (emphasis
8 added). Without this proviso, agencies could permanently escape APA liability simply by doing
9 nothing. Nor, without it, would the law empower courts to “order an agency to take action required
10 by law.” RCW 34.05.574(1)(b). *Ass’n of Wash. Bus. V. Dep’t of Ecol.*, 195 Wash.2d 1, 22, 455
11 P.3d 1126 (2020).

12 **2. Outside Statutory Authority and/or Arbitrary and Capricious**

13 Second, pursuant to RCW 34.05.570(4)(c), Defendants’ failure to fulfill their obligations
14 under 70A.45.020(2) was outside the statutory authority of the agency or the authority conferred
15 by a provision of law; and/or was and is arbitrary and capricious. *Id.* at (c)(ii) and (iii). In view of
16 the clear legislative intent—especially as-amended—Defendant Agencies’ inaction was “willful
17 and unreasoning in disregard of facts and circumstances.” *Conway v. Dep’t of Soc. & Health Servs.*,
18 131 Wash.App. 406, 419, 120 P.3d 130 (2005).

19 With respect to Defendant Agencies’ discretion (or, rather, lack thereof), nothing in the
20 language or construction of RCW 70A.45.020 suggests that Defendant Agencies’ forbearance is a
21 reasonable or even justifiable interpretation of their obligations thereunder. *Kenmore MHP LLC v.*
22 *City of Kenmore*, 1 Wash.3d 513, 520 (2023) (“We uphold an agency's interpretation of ambiguous
23 regulatory language as long as the agency's interpretation *is plausible and consistent with the*
24

1 *legislative intent.*”) (citing *Alpine Lakes Prot. Soc’y v. Dep’t of Nat. Res.*, 102 Wash.App. 1, 14,
2 979 P.2d 929 (1999)) (emphasis added). In *Rios v. Washington Department of Labor and*
3 *Industries*, 145 Wash.2d 483, 39 P.3d 961 (2002), the Washington Supreme Court noted that in an
4 “underregulation” challenge, language like “to the extent feasible” and “reasonably necessary or
5 appropriate” indicate legislative intent to confer the pertinent agencies with broad discretion to
6 choose which regulatory tools to use (or refrain from using) in fulfilling its statutory duties. *Id.* at
7 498–99. Contrast this with the unequivocal language found in RCW 70A.45.020(2), whereunder
8 Defendant Agencies “shall post and maintain on [Commerce’s] website and report to the governor
9 and the appropriate committees” of the Legislature “the total emissions of greenhouse gases for
10 the most recent two years for which such data are available.” *Id.* In view of this unequivocal
11 language, Defendant Agencies’ failure to comply plainly fails to “give effect to the intent of the
12 legislature.” *State v. Evans*, 177 Wash.2d 186, 192, 298 P.3d 724 (2013) (quoting *State v. Sweany*,
13 174 Wash.2d 909, 914, 281 P.3d 305 (2012)).

14 Plaintiffs anticipate that Defendant Agencies will argue that the phrase “for which such
15 data are available” invites a broad latitude in determining what counts as “total emissions of
16 greenhouse gases.” *Id.* To this, Plaintiffs would refer the Court to the wealth of RCWs that *do*
17 detail how to calculate data—in Chapter 70A.45 RCW, as well as others. Specifically, in earlier
18 litigation Defendant Agencies argued that they could not publish their Report until they had
19 analyzed and calculated all available data according to the U.S. Environmental Protection
20 Agency’s (“EPA”) State Inventory Tool (“SIT”), which apparently ensures consistency with the
21 supranational Intergovernmental Panel on Climate Change’s (“IPCC”) guidelines.

22 But nowhere in RCW 70A.45.020 does the Legislature condition timely publication of
23 greenhouse-emissions reports on the application of the SIT methodology made according to IPCC
24

1 guidelines. The Legislature was aware of the IPCC guidelines and could have referenced them in
2 RCW 70A.45.020 but chose not to. It *did* reference both federal and IPCC guidelines in a *different*
3 provision of Chapter 70A.45 RCW, pertaining to the calculation of forests and forest-products-
4 sector carbon numbers:

5 *“It is further the policy of the state to utilize carbon accounting land use, land use change,*
6 *and forestry reporting principles consistence with established reporting guidelines, such*
7 *as those used by the intergovernmental panel on climate change and the United States*
8 *national greenhouse gas reporting inventories.”*

9 RCW 70A.45.090. The Legislature was free to reference federal and IPCC guidelines in outlining
10 what constitutes “available” data with respect to the reports ordered under RCW 70A.45.020, but
11 again, did not do so.

12 RCW 70A.45.020(2), especially as-amended, provides Ecology and Commerce little
13 wiggle room to transpose their own (either bona fide or contrived) “understanding” of what
14 qualifies as reportable data. Defendant Agencies’ failure to follow the RCW’s black-and-white
15 mandate is arbitrary and capricious. An “arbitrary and capricious agency action is action”—or,
16 inferentially, inaction—“that is willful and unreasoning and taken without regard to the attending
17 facts or circumstances.” *City of Kenmore*, 1 Wash.3d at 530, (citing *Ctr. for Env’tl. Law & Pol’y v.*
18 *Dep’t of Ecol.*, 196 Wash.2d 17, 34-36, 468 P.3d 1064 (2020)).

19 An example of agency action deemed “arbitrary or capricious” includes the Department of
20 Social and Health Services’ (“DSHS”) declination to remove a healthcare worker from a “neglect”
21 list without explanation. The Court rejected DSHS’s insistence that if it had explained itself, then
22 the decision would clearly not have been arbitrary or capricious. *Tanggote v. State*, 34
23 Wash.App.2d 1052, 2025 WL 1445594 at *3–4 (2025). The Court of Appeals, Division II reasoned
24 that without an explanation there was no way of knowing, *ex post facto*, that the asserted
hypothetical justification would have been employed. “A ‘substantially justified’ action is one that

1 would satisfy a reasonable person and that had a reasonable basis in law and in fact.” *Id.* at *4.
2 Analogously, Defendant Agencies still have not offered *any* meaningful explanation for its failure
3 to produce the most recent data actually available. Even if the Defendant Agencies *had* offered a
4 contemporaneous explanation for the reporting delays, no explanation would have sufficed to
5 excuse such an obvious violation of the RCW’s express reporting requirements, since “agency
6 action that is in violation of a statute is, by definition, arbitrary and capricious, or contrary to law.”
7 *Skamania Cnty. v. Columbia River Gorge Comm’n*, 26 P.3d 241, 254 (2001).

8 **D. DEFENDANT AGENCIES’ AFFIRMATIVE AND CIVIL RULE 12 DEFENSES**

9 ***1. Affirmative Defenses***

10 ***i. Laches***

11 This affirmative defense is easily dispatched. Laches requires that a party unreasonably
12 delayed the filing of claims. *SCA Hygiene Prods. Aktiebolag v. First Quality Baby Prods., Inc.*,
13 580 U.S. 328, 333 (2017). With respect to statutory claims, it also typically requires the absence
14 of a statute of limitations on bringing same. Plaintiffs have done quite the opposite, filing a lawsuit
15 within months of Defendant Agencies’ failure to fulfill its obligations under 70A.45.020(2),
16 shortly after the two made crystal clear that they would not comply therewith.

17 ***ii. Collateral Estoppel***

18 There is no collateral estoppel barring Plaintiffs’ pursuit of the claims set forth in their
19 Petition. In Washington, collateral estoppel prohibits the relitigating of issues already resolved.
20 Under *Thompson v. Department of Licensing*, 138 Wash.2d 783, 982 P.2d 601 (1999), the
21 Washington Supreme Court reiterated that collateral estoppel only bars bringing claims where “(1)
22 the issue decided in the prior adjudication is identical with the one presented in the second action;
23 (2) the prior adjudication must have ended in a final judgment on the merits; (3) the party against
24

1 whom the plea is asserted was a party or in privity with the party to the prior adjudication; and (4)
2 application of the doctrine does not work an injustice.” *Id.* at 790 (*Nielson v. Spanaway Gen. Med.*
3 *Clinic, Inc.*, 135 Wash.2d 255, 262–63, 956 P.2d 312 (1998)). Taken together, these factors do not
4 tie the present claims to any made prior, let alone are the issues “identical.”

5 First, the last litigation related to this controversy—*Myers v. Ecology*, Case No. 25-2-
6 00228-34 (Thurston Cnty. Super. Ct. June 6, 2025)—involved the older version of the law that has
7 since been amended *specifically* to address Defendant Agencies’ willful misreading of its clearcut
8 text. *See Hallauer v. Spectrum Props., Inc.*, 143 Wn.2d 126, 146, 18 P.3d 540 (2001) (where
9 statutes relate to the same subject matter, they “are to be read together as constituting a unified
10 whole, to the end that a harmonious, total statutory scheme evolves which maintains the integrity
11 of the respective statutes”) (quoting *State v. Wright*, 84 Wn.2d 645, 650, 529 P.2d 453 (1974))).
12 *See also* S.B. 5036, House Bill Report, at 3 (2025) (Ex. 3) (“The legislative findings regarding
13 state emission reduction requirements are expanded to state that consistent tracking and annual
14 reporting of statewide GHG emissions is an important responsibility that allows the Legislature to
15 determine the state emissions trajectory and make policy interventions.”).

16 Second, the last litigation involved similar, though hardly identical, legal and factual issues,
17 and was not decided on the merits but rather turned on apparent defects in standing which this
18 litigation fully ameliorates. Indeed, in this other lawsuit the defendants insisted that the plaintiffs
19 claims should not succeed because he had only brought action under the UDJA, whereas the APA
20 was a more appropriate avenue therefor. Nor can the third factor—same or in-privity party—alone
21 justify application of collateral estoppel. *See Thompson*, 138 Wash.2d at 790 (including the
22 conjunctive “and” instead of “or” and calling the test’s prongs “requirements”).
23
24

1 Fourth, even if the aforesaid factors favored collateral estoppel, its application would still
2 work an injustice and be prohibited. In *Nielsen*, the Washington Supreme Court noted that “[i]n
3 determining whether application of the doctrine of collateral estoppel would work an injustice, we
4 focus on whether the parties to the earlier adjudication were afforded a full and fair opportunity to
5 litigate their claim in a neutral forum.” *Id.* at 264–65 (internal citations omitted). The prior
6 litigation provided no such relief, as it did not include Plaintiff Lawmakers, who are plainly injured
7 by Defendant Agencies’ inaction. The earlier litigation offered *zero* color on their or other
8 Plaintiffs’ rights under RCW 70A.45.020, having been dismissed on standing grounds in part
9 because the old RCW was “moot” because an amended version was *soon* to be effective. *See*
10 *Reninger v. State Dep’t of Corrs.*, 134 Wash.2d 437, 451, 951 P.2d 782 (1998) (noting that
11 collateral estoppel “must not apply ‘so rigidly as to defeat the ends of justice, or to work an
12 injustice’”) (quoting *Henderson v. Bardahl Int’l Corp.*, 72 Wash.2d 109, 119, 431 P.2d 961
13 (1967)).

14 **2. Civil Rule 12 Defenses**

15 **i. Failure to State a Claim Upon Which Relief Can Be Granted**

16 “Courts should dismiss a complaint under CR 12(b)(6) only when it appears beyond a
17 reasonable doubt that no facts justifying recovery exist.” *Feyen v. Spokane Teachers Credit Union*,
18 23 Wash.App.2d 264, 274, 515 P.3d 996 (2022) (citing *Cutler v. Phillips Petroleum Co.*, 124
19 Wash.2d 749, 755, 881 P.2d 216 (1994)). This high bar obligates this Court, *inter alia*, to “accept
20 any reasonable inferences from the facts alleged as true.” *Id.* (citing *Reid v. Pierce Cnty.*, 136
21 Wash.2d 195, 201, 961 P.2d 333 (1998)). And permits it to “consider *any* factual scenario under
22 which the plaintiff might have a valid claim . . .” *Id.* at 275 (citing *N. Coast Enters., Inc. v. Factoria*
23 *P’ship*, 94 Wash. App. 855, 859, 974 P.2d 1257 (1999)).

1 Plaintiffs have brought as strong a claim as one can bring that Defendant Agencies have
2 failed in their statutory obligations under RCW 70A.45.020. There are no real factual disputes in
3 issue—simply a disagreement about what constitutes Defendants’ compliance with the RCW.
4 Defendant Agencies readily concede that they have not produced the numbers RCW 70A.45.020
5 require. Plaintiffs counter that the RCW requires Defendant Agencies produce the numbers that
6 *are* available and to do so as they *become* available. Failure to state a claim upon which relief can
7 be granted is reserved for those circumstances in which it is impossible that the justiciable facts
8 are as they have been alleged—*i.e.*, were Defendant Agencies to counter with irrefutable evidence
9 that they did, indeed, produce the numbers at the time and in the manner the Plaintiffs (properly)
10 interpret RCW 70A.45.020 to require.

11 True enough, Plaintiffs would have no claims were Defendants to actually *do* what the law
12 requires of them. The allegation at the heart of this dispute is that they have not. Hence this
13 litigation follows, with all “allegations of the complaint” presumed “true for the purpose of such
14 [12(b)(6)] motion.” *Feyen*, 23 Wash.App.2d at 274 (“The superior court and this court grant such
15 motions sparingly, with care, and only in the unusual case in which the plaintiff’s allegations show
16 on the face of the complaint an insuperable bar to relief.”) (quoting *Tenore v. AT&T Wireless*
17 *Servs.*, 136 Wash.2d 322, 330, 962 P.2d 104 (1998)).

18 **ii. Exhaustion of Administrative Remedies**

19 Plaintiffs have no administrative remedies under the APA, and any such remedies under
20 such should be treated as exhausted under RCW 34.05.534. RCW 70A.45.020 neither provides
21 nor cross-references to any procedure for challenging Defendant Agencies’ failure to conform
22 therewith. Further, were Plaintiffs to pursue unofficial channels—*e.g.*, asking nicely for
23 Defendants to fulfill their statutory duties—it is obvious from their arguments in the previous
24

1 litigation that they would reject Plaintiffs’ entreaties wholesale. Administrative remedies must be
2 exhausted “when the ‘relief sought ... can be obtained by resort to an exclusive or adequate
3 administrative remedy.’” *Citizens for Mount Vernon*, 133 Wash.2d 861, 866, 947 P.2d 1208 (1997)
4 (emphasis added) (alteration in original) (quoting *S. Hollywood Hills Citizens Ass’n for the Pres.*
5 *of Neighborhood Safety & the Env’t v. King Cnty.*, 101 Wash.2d 68, 73, 677 P.2d 114 (1984)).

6 Here, Plaintiffs ask that Defendant Agencies take actions they are required to take. Their
7 very refusal is the basis for this litigation, and so there is necessarily no administrative avenue that
8 could remediate the impasse. The doctrine of exhaustion of administrative remedies provides that
9 “[i]n general an agency action cannot be challenged *on review* until all rights of administrative
10 appeal have been exhausted.” *Chaney v. Fetterly*, 100 Wash.App. 140, 147, 995 P.2d 1284
11 (quoting *Spokane Cnty. Fire Protec. Dist. No. 9 v. Spokane Cnty. Bound. Rev. Bd.*, 97 Wash.2d
12 922, 928, 652 P.2d 1356 (1982)) (emphasis added in *Chaney*). But what if an agency is refusing
13 to take an action that it has no discretion to shirk?

14 In *Northwest Ecosystem Alliance v. Washington Forest Practices Board*, 149 Wash.2d 67,
15 66 P.3d 614 (2003), the Washington Supreme Court held that while the “APA requires a party to
16 petition for rule making before seeking judicial review pursuant to RCW 34.05.570(4)(b) for the
17 alleged failure of an agency to carry out a statutory duty,” *id.* at 75, there are several exceptions,
18 including futility and “where the remedies would be patently inadequate.” *Id.* at 78. On both
19 counts, Defendant Agencies cling stalwartly to their misreading of RCW 70A.45.020(2). The two
20 are clearly committed to their position. Their demand that Plaintiffs pursue pointless administrative
21 remedies that they have not specified (and to our knowledge, do not exist) as part of a scheme to
22 run out the clock—to continue withholding the most recent data available until the next reporting
23
24

1 cycle begins and potentially moots Plaintiffs’ claims. And as Justice Thomas Chambers
2 emphasized in his *Northwest Ecosystem* concurrence:

3 [T]his court does not require, as a condition of judicial review under the Administrative
4 Procedure Act, ch. 34.05 RCW, a *formal petition* for rule making, if to do so would be a
5 completely futile exercise. RCW 34.05.534(3)(b); *cf. Dioxin/Organochlorine Ctr., v. Dep’t*
6 *of Ecology*, 119 Wash.2d 761, 776, 837 P.2d 1007 (1992). As the majority notes, RCW
7 34.05.534 does provide exceptions to the exhaustion requirement. Majority at 75. When
8 the petition would be futile, or when the purpose of primary jurisdiction would not be
9 served by first requiring administrative exhaustion, or when irreparable harm caused by
10 delay would outweigh the benefit “the court may relieve a petitioner of the requirement to
11 exhaust any or all administrative remedies.” RCW 34.05.534(3).

12 *Id.* at 82 (Chambers, J., concurring) (emphasis added). As discussed, Plaintiff Myers did previously
13 ask Defendant Agencies to act in accordance with their statutory duties, albeit through informal
14 channels. Pedantic imposition of a “formal petition” requirement that would clearly fail demands
15 an exercise in futility that, again, would merely facilitate Defendant Agencies’ efforts to delay
16 resolution of this case until sufficient passage of time renders their illegal position a *fait accompli*.

17 **iii. Standing and Justiciability**

18 Plaintiffs—and especially Plaintiff Lawmakers—have the most clearcut standing possible
19 and it is frankly remarkable to suggest otherwise. Plaintiff Senator Nikki Torres is a member of
20 the Washington State Senate, representing the 15th Legislative District. Sen. Torres is the ranking
21 member on the Senate Local Government Committee and a member of the Senate Ways and Means
22 Committee. As a member of the primary fiscal committee in the Senate and a significant policy
23 committee, she is interested in (and statutorily entitled to) receiving the reports required under
24 RCW 70A.45.020 in order to ascertain whether the programs that are designed to reduce carbon
emissions in Washington State are effective and whether the funds spent on these programs by the
state is a prudent use of its resources. The same applies to Representative Mary Dye who, as
ranking member of the House Environment and Energy Committee and a member of the House
Appropriations Committee—bodies tasked with lawmaking on environmental and budgetary

1 matters—is certainly interested in the timely reporting of numbers to help determine whether the
2 programs designed to reduce carbon emissions in Washington State are cost-effective and actually
3 effective.

4 Plaintiff WPC is a nonprofit corporation that advocates for smart and effective
5 environmental policies, a core mission of which relies, indispensably, on the official ongoing
6 reporting of all available data on Washington’s emissions numbers which Defendants have in their
7 possession. WPC’s stated mission is to “improve the lives of Washingtonians by promoting high-
8 quality, non-partisan evidence based research to advance policy solutions for a better
9 Washington.” Wash. Pol’y Ctr., *About*, <https://www.washingtonpolicy.org/about/> (last visited
10 January 13, 2026). Without the timely release of the report mandated in RCW 70A.45.020, WPC
11 plainly lacks the information it needs to conduct and publish research on Washington’s climate-
12 change program, undermining its mission to advance policy solutions for a better Washington.

13 Finally, Plaintiff Todd Myers is a staff member with WPC. As part of his compensated
14 duties, Myers researches climate policy in Washington State and in particular attempts to ascertain
15 whether the state’s programs are making progress in reducing carbon emissions. The reports
16 required under RCW 70A.45.020 are crucial to his work.

17 Plaintiffs have clearly presented a justiciable controversy for which they each have
18 standing. *To-Ro Trade Shows v. Collins*, 144 Wash.2d 403, 417 (2001) (“To satisfy our four-factor
19 justiciability test, a party must demonstrate a direct, substantial interest in an actual, immediate
20 dispute with a truly adverse party, and that dispute must be one that the court's decision will
21 conclusively resolve.”) (internal citations omitted). On standing, ripeness, and redressability,
22 Plaintiffs have obvious, direct and substantial interests in what is, in view of Defendant Agencies’
23 indisputable violation of greenhouse emissions-reporting requirements, an immediate and actual
24

1 controversy that a declaratory judgment or, in the alternative, resolution under the APA
2 confirming same would resolve. *Id.* at 411 (finding that standing and justiciability requirements
3 tend to overlap). Plaintiffs are thus solidly within the “zone of interest” for whom Defendant
4 Agencies’ conduct caused an injury-in-fact. The Supreme Court has long held that non-profit
5 corporations and unincorporated associations have standing as stand-ins for their members or for
6 those whose interests they tend to represent. *SAVE v. City of Bothell*, 89 Wash.2d 862, 864 (1978).

7 Even if this controversy lacked one (1) or more of the four (4) primary bases for judicial
8 intervention, it would still be justiciable under the “public importance doctrine.” For UDJA
9 purposes, matters of public importance are those that “immediately affect substantial segments of
10 the population” and whose “outcome will have a direct bearing on the commerce, finance, labor,
11 industry or agriculture generally.” *Wash. St. Hous. Fin. Comm’n v. Nat’l Homebuyers Fund, Inc.*,
12 193 Wash.2d.704, 718 (2019) (quoting *Wash. Nat. Gas. Co. v. Pub. Util. Dist. No. 1 of Snohomish*
13 *Cnty.*, 77 Wash.2d 94, 96 (1969)). And is “the sort of policy that lends itself to quick and easy
14 resolution through a legal ruling.” *Civil Survival Project v. State*, 24 Wash.App.2d 564, 584
15 (2022). This matter no doubt has a direct bearing on commerce, etc., as it presents a false
16 impression of the state’s progress on emissions numbers, which will materially impact economic
17 decision-making across sectors. Reviewing the policy decision at the heart of this case indeed
18 “lends itself to quick and easy resolution through a legal ruling.”

19 VI. CONCLUSION

20 For the foregoing reasons, and those set forth in the Petition, Plaintiffs hereby move the
21 Court to **GRANT** this Motion for Summary Judgment, via declaratory judgment and the issuance
22 of a writ of mandamus under the UDJA or, in the alternative, an order pursuant to the APA
23
24

1 compelling Defendants to produce a report that complies, in all respects, with RCW
2 70A.45.020(2).

3 Respectfully submitted this 14th day of January, 2026.

4 /s/ Jackson Maynard

5 JACKSON WILDER MAYNARD, JR.

6 WSBA No. 43481

7 CITIZEN ACTION DEFENSE FUND

8 111 21st Ave SW

9 Olympia, WA 98501

10 (850) 519-3495

11 /s/ Sam Spiegelman

12 SAM SPIEGELMAN

13 WSBA No. 58212

14 CITIZEN ACTION DEFENSE FUND

15 111 21st Ave SW

16 Olympia, WA 98501

17 (201) 314-9505

18 *Attorneys for Plaintiffs*

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

VIA EMAIL:

ECYOLYEF@ATG.WA.GOV
zachary.packer@atg.wa.gov
talía.thuet@atg.wa.gov
chris.reitz@atg.wa.gov
ruth.wilson@atg.wa.gov
AHDOLyEF@atg.wa.gov
steve.scheele@atg.wa.gov
sandra.adix@atg.wa.gov
monica.wusstig@atg.wa.gov

/s/ Jackson Maynard
JACKSON WILDER MAYNARD, JR.
WSBA No. 43481
CITIZEN ACTION DEFENSE FUND
111 21st Ave SW
Olympia, WA 98501
(850) 519-3495



**CITIZEN
ACTION**
DEFENSE FUND

EXHIBIT 1

CERTIFICATION OF ENROLLMENT

SENATE BILL 5036

Chapter 195, Laws of 2025

69th Legislature
2025 Regular Session

GREENHOUSE GAS EMISSIONS DATA—ANNUAL REPORTING

EFFECTIVE DATE: July 27, 2025

Passed by the Senate April 17, 2025
Yeas 30 Nays 19

JOHN LOVICK

President of the Senate

Passed by the House April 10, 2025
Yeas 95 Nays 0

LAURIE JINKINS

**Speaker of the House of
Representatives**

Approved May 2, 2025 10:36 AM

BOB FERGUSON

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5036** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

Secretary

FILED

May 5, 2025

**Secretary of State
State of Washington**

SENATE BILL 5036

AS AMENDED BY THE HOUSE

Passed Legislature - 2025 Regular Session

State of Washington

69th Legislature

2025 Regular Session

By Senators Boehnke, Chapman, Dozier, Fortunato, Harris, Hasegawa, Short, and Wellman

Prefiled 12/13/24. Read first time 01/13/25. Referred to Committee on Environment, Energy & Technology.

1 AN ACT Relating to strengthening Washington's leadership and
2 accountability on climate policy by transitioning to annual reporting
3 of statewide emissions data; amending RCW 70A.45.005 and 70A.65.130;
4 and reenacting and amending RCW 70A.45.020.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 70A.45.005 and 2021 c 316 s 44 are each amended to
7 read as follows:

8 (1) The legislature finds that Washington has long been a
9 national and international leader on energy conservation and
10 environmental stewardship, including air quality protection,
11 renewable energy development and generation, emission standards for
12 fossil-fuel based energy generation, energy efficiency programs,
13 natural resource conservation, sustainable forestry and the
14 production of forest products, vehicle emission standards, and the
15 use of biofuels. Washington is also unique among most states in that
16 in addition to its commitment to reduce emissions of greenhouse
17 gases, it has established goals to grow the clean energy sector and
18 reduce the state's expenditures on imported fuels.

19 (2) The legislature further finds that Washington should continue
20 its leadership on climate change policy by creating accountability
21 for achieving the emission reductions established in RCW 70A.45.020,

1 participating in the design of a regional multisector market-based
2 system to help achieve those emission reductions, assessing other
3 market strategies to reduce emissions of greenhouse gases,
4 maintaining and enhancing the state's ability to continue to
5 sequester carbon through natural and working lands and forest
6 products, and ensuring the state has a well-trained workforce for our
7 clean energy future. The consistent tracking and annual reporting of
8 statewide emissions in a greenhouse gas inventory as required under
9 RCW 70A.45.020 is an important responsibility that allows the
10 legislature to determine whether state emissions are on a trajectory
11 to achieve statutory emissions reduction limits, or whether new or
12 amended policy interventions are necessary to achieve those limits.

13 (3) It is the intent of the legislature that the state will: (a)
14 Limit and reduce emissions of greenhouse gas consistent with the
15 emission reductions established in RCW 70A.45.020; (b) minimize the
16 potential to export pollution, jobs, and economic opportunities; (c)
17 support industry sectors that can act as sequesterers of carbon; and
18 (d) reduce emissions at the lowest cost to Washington's economy,
19 consumers, and businesses.

20 (4) In the event the state elects to participate in a regional
21 multisector market-based system, it is the intent of the legislature
22 that the system will become effective by January 1, 2012, after
23 authority is provided to the department for its implementation. By
24 acting now, Washington businesses and citizens will have adequate
25 time and opportunities to be well positioned to take advantage of the
26 low carbon economy and to make necessary investments in low carbon
27 technology.

28 (5) It is also the intent of the legislature that the regional
29 multisector market-based system recognize Washington's unique
30 emissions and sequestration portfolio, including the:

31 (a) State's hydroelectric system;
32 (b) Opportunities presented by Washington's abundant forest
33 resources and the associated forest products industry, along with
34 aquatic and agriculture land and the associated industries; and
35 (c) State's leadership in energy efficiency and the actions it
36 has already taken that have reduced its generation of greenhouse gas
37 emissions and that entities receive appropriate credit for early
38 actions to reduce greenhouse gases.

39 (6) If any revenues, excluding those from state trust lands, that
40 accrue to the state are created by a market system, they must be used

1 for the purposes established in chapter 70A.65 RCW and to further the
2 state's efforts to achieve the goals established in RCW 70A.45.020,
3 address the impacts of global warming on affected habitats, species,
4 and communities, promote and invest in industry sectors that act as
5 sequesterers of carbon, and increase investment in the clean energy
6 economy particularly for communities and workers that have suffered
7 from heavy job losses and chronic unemployment and underemployment.

8 **Sec. 2.** RCW 70A.45.020 and 2020 c 79 s 2, 2020 c 32 s 4, and
9 2020 c 20 s 1398 are each reenacted and amended to read as follows:

10 (1)(a) The state shall limit anthropogenic emissions of
11 greenhouse gases to achieve the following emission reductions for
12 Washington state:

13 (i) By 2020, reduce overall emissions of greenhouse gases in the
14 state to 1990 levels, or (~~ninety million five hundred thousand~~)
15 90,500,000 metric tons;

16 (ii) By 2030, reduce overall emissions of greenhouse gases in the
17 state to (~~fifty million~~) 50,000,000 metric tons, or (~~forty-five~~)
18 45 percent below 1990 levels;

19 (iii) By 2040, reduce overall emissions of greenhouse gases in
20 the state to (~~twenty-seven million~~) 27,000,000 metric tons, or
21 (~~seventy~~) 70 percent below 1990 levels;

22 (iv) By 2050, reduce overall emissions of greenhouse gases in the
23 state to (~~five million~~) 5,000,000 metric tons, or (~~ninety-five~~)
24 95 percent below 1990 levels.

25 (b) By December 1, 2008, the department shall submit a greenhouse
26 gas reduction plan for review and approval to the legislature,
27 describing those actions necessary to achieve the emission reductions
28 in (a) of this subsection by using existing statutory authority and
29 any additional authority granted by the legislature. Actions taken
30 using existing statutory authority may proceed prior to approval of
31 the greenhouse gas reduction plan.

32 (c) In addition to the emissions limits specified in (a) of this
33 subsection, the state shall also achieve net zero greenhouse gas
34 emissions by 2050. Except where explicitly stated otherwise, nothing
35 in chapter 14, Laws of 2008 limits any state agency authorities as
36 they existed prior to June 12, 2008.

37 (d) Consistent with this directive, the department shall take the
38 following actions:

1 (i) Develop and implement a system for monitoring and reporting
2 emissions of greenhouse gases as required under RCW 70A.15.2200; and

3 (ii) Track progress toward meeting the emission reductions
4 established in this subsection, including the results from policies
5 currently in effect that have been previously adopted by the state
6 and policies adopted in the future, and report on that progress.
7 Progress reporting should include statewide emissions as well as
8 emissions from key sectors of the economy including, but not limited
9 to, electricity, transportation, buildings, manufacturing, and
10 agriculture.

11 (e) Nothing in this section creates any new or additional
12 regulatory authority for any state agency as they existed prior to
13 January 1, 2019.

14 (2) (~~((By December 31st of each even-numbered year beginning in~~
15 ~~2010, the))~~) (a) The department and the department of commerce shall
16 post and maintain on the department's website and report to the
17 governor and the appropriate committees of the senate and house of
18 representatives the total emissions of greenhouse gases for the
19 ((preceding)) most recent two years for which such data are
20 available, and totals in each major source sector, including
21 emissions associated with leaked gas identified by the utilities and
22 transportation commission under RCW 81.88.160. The report must
23 include greenhouse gas emissions from wildfires, developed in
24 consultation with the department of natural resources. The department
25 shall ensure the reporting rules adopted under RCW 70A.15.2200 allow
26 it to develop a comprehensive inventory of emissions of greenhouse
27 gases from all significant sectors of the Washington economy. The
28 report required under this section must be completed by December 31st
29 of each even-numbered year through 2030, and must be completed by
30 December 31st of each year beginning December 31, 2031.

31 (b) In addition to the report required in (a) of this subsection,
32 by December 31, 2027, and December 31, 2029, the department and the
33 department of commerce shall post and maintain on the department's
34 website and provide notification to the governor and the appropriate
35 committees of the senate and the house of representatives summarizing
36 the total emissions of greenhouse gases for the most recent year for
37 which such data is available, and totals in each major source sector
38 reported as required under (a) of this subsection.

39 (3) Except for purposes of reporting, emissions of carbon dioxide
40 from industrial combustion of biomass in the form of fuel wood, wood

waste, wood by-products, and wood residuals shall not be considered a greenhouse gas as long as the region's silvicultural sequestration capacity is maintained or increased.

Sec. 3. RCW 70A.65.130 and 2021 c 316 s 15 are each amended to read as follows:

(1) For the benefit of ratepayers, allowances must be allocated at no cost to covered entities that are natural gas utilities.

(a) By October 1, 2022, the department shall adopt rules, in consultation with the utilities and transportation commission, establishing the methods and procedures for allocating allowances to natural gas utilities. Rules adopted under this subsection must allow for a natural gas utility to be provided allowances at no cost to cover their emissions and decline proportionally with the cap, consistent with RCW 70A.65.070. Allowances allocated at no cost to natural gas utilities must be consigned to auction for the benefit of ratepayers consistent with subsection (2) of this section, deposited for compliance, or a combination of both. The rules adopted by the department pursuant to this section must include provisions directing revenues generated under this subsection to the applicable utilities.

(b) By October 1, 2022, the department shall adopt an allocation schedule by rule, in consultation with the utilities and transportation commission, for the first two compliance periods for the provision of allowances for the benefit of ratepayers at no cost to natural gas utilities.

(c) By October 1, 2028, the department shall adopt an allocation schedule by rule, in consultation with the utilities and transportation commission, for the provision of allowances for the benefit of ratepayers at no cost to natural gas utilities for the compliance periods contained within calendar years 2031 through 2040.

(2)(a) Beginning in 2023, 65 percent of the no cost allowances must be consigned to auction for the benefit of customers, including at a minimum eliminating any additional cost burden to low-income customers from the implementation of this chapter. Rules adopted under this subsection must increase the percentage of allowances consigned to auction by five percent each year until a total of 100 percent is reached.

(b) Revenues from allowances sold at auction must be returned by providing nonvolumetric credits on ratepayer utility bills, prioritizing low-income customers, or used to minimize cost impacts

1 on low-income, residential, and small business customers through
2 actions that include, but are not limited to, weatherization,
3 decarbonization, conservation and efficiency services, and bill
4 assistance. The customer benefits provided from allowances consigned
5 to auction under this section must be in addition to existing
6 requirements in statute, rule, or other legal requirements.

7 (c) Except for low-income customers, the customer bill credits
8 under this subsection are reserved exclusively for customers at
9 locations connected to a natural gas utility's system on July 25,
10 2021. Bill credits may not be provided to customers of the gas
11 utility at a location connected to the system after July 25, 2021.

12 (3) In order to qualify for no cost allowances, covered entities
13 that are natural gas utilities must provide copies of their
14 greenhouse gas emissions reports filed with the United States
15 environmental protection agency under 40 C.F.R. Part 98 subpart NN -
16 suppliers of natural gas and natural gas liquids for calendar years
17 2015 through 2021 to the department on or before March 31, 2022. The
18 copies of the reports must be provided in electronic form to the
19 department, in a manner prescribed by the department. The reports
20 must be complete and contain all information required by 40 C.F.R.
21 Sec. 98.406 including, but not limited to, information on large end
22 users served by the natural gas utility. For any year where a natural
23 gas utility was not required to file this report with the United
24 States environmental protection agency, a report may be submitted in
25 a manner prescribed by the department containing all of the
26 information required in the subpart NN report.

27 (4) To ~~((continue receiving))~~ receive no cost allowances, a
28 natural gas utility must provide to the department ~~((the United~~
29 ~~States environmental protection agency subpart NN greenhouse gas~~
30 ~~emissions report for each reporting year in the manner and by the~~
31 ~~dates provided))~~ an annual greenhouse gas emissions report as
32 required by RCW 70A.15.2200(5) ~~((as part of the greenhouse gas~~
33 ~~reporting requirements of this chapter))~~.

Passed by the Senate April 17, 2025.

Passed by the House April 10, 2025.

Approved by the Governor May 2, 2025.

Filed in Office of Secretary of State May 5, 2025.

--- END ---

EXHIBIT 2

- ☐ Expedite
☒ No hearing set
☐ Hearing is set

Date:

Time:

Judge/Calendar:

**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY**

STATE SENATOR NIKKI TORRES, in Her
Official Capacity; STATE REPRESENTATIVE
MARY DYE, in Her Official Capacity;
WASHINGTON POLICY CENTER, a nonprofit
corporation; and TODD MYERS,

Plaintiffs,

v.

WASHINGTON DEPARTMENT OF ECOLOGY
and WASHINGTON DEPARTMENT OF
COMMERCE, agencies of the State of
Washington,

Defendants.

No.

**PETITION FOR WRIT OF
MANDAMUS AND DECLARATORY
JUDGMENT OR, IN THE
ALTERNATIVE, PETITION FOR
JUDICIAL REVIEW UNDER THE
ADMINISTRATIVE PROCEDURE
ACT**

I. INTRODUCTION

1. The Washington Department of Ecology (“Ecology”) and the Washington Department of Commerce (“Commerce”) (together, “Defendants” or “Defendant agencies”) are mandated by the Washington Legislature to report the total statewide emissions of greenhouse gases for the “most recent two years *for which such data are available*,” by December 31st in each even-numbered year. RCW 70A.45.020(2) (Ex. A) (as-amended via S.B. 5036, as-passed in the 2025 Regular Session) (emphases added). The Legislature entrusted Defendant agencies with this vital task to aid in its efforts to combat what it identified as “an existential threat to the livelihoods, health, and well-being of all Washingtonians.” Intent 2020 c. 79(1). The Legislature continued to emphasize

1 the importance of this mission by noting that “[o]ur state is experiencing a climate emergency in
2 the form of devastating wildfires, drought, lack of snowpack, and increases in ocean acidification
3 caused in part by climate change.” *Id.* Yet despite the clarion call to action, Defendant agencies
4 have failed to comply with their mandatory duty to provide lawmakers, and—given this matter’s
5 public import—all Washingtonians, the rolling information necessary to ascertain whether
6 progress is being made to address the “existential threat” that the Legislature identified in state
7 law.

8 2. Since midnight on January 1, 2025, Defendant agencies remain in direct violation of RCW
9 70A.45.020(2). Ecology released the gas-emissions report (“Report”) *five days late*—on January
10 6, 2025—and *omitted* numbers from 2023 and 2024, the two (2) preceding years. The Legislature
11 entrusted these agencies to meet the mandated deadline, they failed to do so.

12 3. Plaintiffs State Senator Nikki Torres, State Representative Mary Dye, the Washington
13 Policy Center (“WPC”), and Todd Myers (together, “Plaintiffs”) seek relief pursuant to RCW
14 7.16.160 (mandamus), Ch. 7.24 RCW (or the Uniform Declaratory Judgment Act (“UDJA”)) or,
15 in the alternative, via RCW 34.05.570(4)(b) and/or (c), of the Administrative Procedure Act
16 (“APA”).

17 **II. PARTIES**

18 4. Plaintiff Senator Nikki Torres is a member of the Washington State Senate, representing
19 the 15th Legislative District. Sen. Torres is the ranking member on the Senate Local Government
20 Committee and a member of the Senate Ways and Means Committee. As a member of the primary
21 fiscal committee in the Senate and a significant policy committee, she is interested in receiving the
22 reports required under RCW 70A.45.020 in order to ascertain whether the programs that are
23
24

1 designed to reduce carbon emissions in Washington State are effective and whether the funds spent
2 on these programs by the state is a prudent use of its resources.

3 5. Plaintiff Representative Mary Dye serves in the Washington State House of
4 Representatives, representing the 9th Legislative District. Rep. Dye is the ranking member of the
5 House Environment and Energy Committee and a member of the House Appropriations
6 Committee. As the ranking member in the committee charged with environmental policy matters,
7 she is interested in receiving the reports required under RCW 70A.45.020 in order to ascertain
8 whether the programs that are designed to reduce carbon emissions in Washington State are
9 effective or whether other policy goals and solutions should be considered.

10 6. Plaintiff WPC is a nonprofit corporation that advocates for smart and effective
11 environmental policies, a core mission of which, as set forth in its Joint Declaration (Ex. C), relies,
12 indispensably, on the official ongoing reporting of all available data on Washington's emissions
13 numbers which Defendants have in their possession. WPC's stated mission is to "improve the lives
14 of Washingtonians by promoting high-quality, non-partisan evidence based research to advance
15 policy solutions for a better Washington." Without the information mandated by law to be provided
16 in the reports required in RCW 70A.45.020, WPC lacks the evidence it needs to conduct research
17 on climate change to carry out its mission to advance policy solutions for a better Washington.

18 7. Plaintiff Todd Myers is a staff member with WPC. As part of his compensated duties,
19 Myers researches climate policy in Washington State and in particular attempts to ascertain
20 whether the state's programs are making progress in reducing carbon emissions. The reports
21 required under RCW 70A.45.020 are crucial to his work. Plaintiff Myers previously filed suit
22 pursuant to the UDJA, but that litigation was dismissed at summary judgment for lack of standing
23 (herein remedied with a more detailed discussion of Mr. Myers work as a staff member of WPC
24

1 and beneficial interest in this litigation). *Myers v. Ecology*, Case No. 25-2-00228-34 (Thurston
2 Cnty. Super. Ct. June 6, 2025).

3 8. Defendant Washington Department of Ecology is an agency of the State of Washington,
4 tasked with undertaking certain ministerial acts under RCW 70A.45.020.

5 9. Defendant Washington Department of Commerce is an agency of the State of Washington,
6 tasked with undertaking certain ministerial acts under RCW 70A.45.020.

7 **III. JURISDICTION, VENUE, AND STANDING**

8 10. The Superior Court of Thurston County has jurisdiction under RCW 2.08.020, RCW
9 7.24.010, RCW 7.24.020, and RCW 34.05.514.

10 11. Venue in Thurston County is appropriate under RCW 4.92.010.

11 12. Plaintiffs have standing under the UDJA based upon RCW 7.24.020, which provides, in
12 relevant part, that “a person . . . whose rights, status or other legal relations are affected by a
13 statute, municipal ordinance, contract or franchise, may have determined any question of
14 construction or validity arising under the instrument, statute, ordinance, contract or franchise and
15 obtain a declaration of rights, status or other legal relations thereunder.” *Id.*

16 13. Plaintiffs have standing to seek a court order compelling Defendants to perform an act
17 which the law especially enjoins as a duty resulting from an office, trust or station, or to compel
18 the admission of Plaintiffs to the use and enjoyment of a right or office to which Plaintiffs are
19 entitled, and from which the parties are unlawfully precluded by Defendants.

20 14. Plaintiffs have standing under the APA based upon RCW 34.05.530. *Seattle Bldg. Council*
21 *v. Appren. Council*, 129 Wash.2d 787, 920 P.2d 581 (1996) (casting broad standing to bring APA
22 violations).

1 15. Each Plaintiff has a beneficial interest in the outcome of this litigation, based upon Senator
2 Torres's and Representative Dye's memberships in the Legislature and on one or more of the
3 "appropriate committees" to which Defendants must report under RCW 70A.45.020(2); and
4 WPC's role (and Myers's position therein) as a watchdog of Washington's environmental policies.
5 *Advocates for a Cleaner Tacoma v. Puget Sound Clear Air Agency*, 29 Wash.App.2d 89, 540 P.3d
6 821 (2023) (leaving untouched the standing of environmental groups to bring actions under various
7 conservation laws, including Chapter 70A.45 RCW). Plaintiffs WPC and Todd Myers rely upon
8 Defendants' prompt and accurate reporting of emissions numbers for the reasons set forth in their
9 Joint Declaration. Ex. C.

10 16. Plaintiffs also have standing because this is an issue of serious public import, as the
11 Legislature itself made clear in the statute's intent, which is still current post-amendment. The
12 accuracy of the Report immediately affects substantial segments of the population, and the
13 outcome of this suit and whether this information will be available will have a direct bearing on
14 commerce, finance, labor, or industry generally.

15 17. For UDJA purposes, matters of public importance are those that "immediately affect
16 substantial segments of the population" and whose "outcome will have a direct bearing on the
17 commerce, finance, labor, industry or agriculture generally." *Wash. St. Hous. Fin. Comm'n v. Nat'l*
18 *Homebuyers Fund, Inc.*, 193 Wash.2d.704, 718 (2019) (quoting *Wash. Nat. Gas. Co. v. Pub. Util.*
19 *Dist. No. 1 of Snohomish Cnty.*, 77 Wash.2d 94, 96 (1969)). And is "the sort of policy that lends
20 itself to quick and easy resolution through a legal ruling." *Civil Survival Project v. State*, 24
21 Wash.App.2d 564, 584 (2022). At present, the Report provides an incomplete impression of the
22 state's progress, which will materially impact economic decision-making across sectors.

IV. STATEMENT OF FACTS

18. In 2025, the Legislature amended RCW 70A.45.020. As follows are changes of the portions relevant to this litigation, with removed text ~~struck through~~ and added language underlined:

Greenhouse gas emissions reductions—Reporting requirements.

(1)(a) The state shall limit anthropogenic emissions of greenhouse gases to achieve the following emission reductions for Washington state:

(i) By 2020, reduce overall emissions of greenhouse gases in the state to 1990 levels, or ~~ninety million five hundred thousand~~ 90,500,000 metric tons;

(ii) By 2030, reduce overall emissions of greenhouse gases in the state to ~~fifty million~~ 50,000,000 metric tons, or ~~forty five~~ 45 percent below 1990 levels;

(iii) By 2040, reduce overall emissions of greenhouse gases in the state to ~~twenty seven million~~ 27,000,000 metric tons, or ~~seventy~~ 70 percent below 1990 levels;

(iv) By 2050, reduce overall emissions of greenhouse gases in the state to ~~five million~~ 5,000,000 metric tons, or ~~ninety five~~ 95 percent below 1990 levels.

(b) By December 1, 2008, the department shall submit a greenhouse gas reduction plan for review and approval to the legislature, describing those actions necessary to achieve the emission reductions in (a) of this subsection by using existing statutory authority and any additional authority granted by the legislature. Actions taken using existing statutory authority may proceed prior to approval of the greenhouse gas reduction plan.

(c) In addition to the emissions limits specified in (a) of this subsection, the state shall also achieve net zero greenhouse gas emissions by 2050. Except where explicitly stated otherwise, nothing in chapter 14, Laws of 2008 limits any state agency authorities as they existed prior to June 12, 2008.

(d) Consistent with this directive, the department shall take the following actions:

(i) Develop and implement a system for monitoring and reporting emissions of greenhouse gases as required under RCW 70A.15.2200; and

(ii) Track progress toward meeting the emission reductions established in this subsection, including the results from policies currently in effect that have been previously adopted by the state and policies adopted in the future, and report on that progress. Progress reporting should include statewide emissions as well as emissions from key sectors of the economy including, but not limited to, electricity, transportation, buildings, manufacturing, and agriculture.

(e) Nothing in this section creates any new or additional regulatory authority for any state agency as they existed prior to January 1, 2019.

(2) ~~By December 31st of each even-numbered year beginning in 2010, the~~ (a) The department and the department of commerce shall post and maintain on the department's website and report to the governor and the appropriate committees of the senate and house of representatives the total emissions of greenhouse gases for the preceding most recent two years for which such data are available, and totals in each major source sector, including emissions associated with leaked gas identified by the utilities and transportation commission under RCW 81.88.160. The report must include greenhouse gas emissions from wildfires, developed in consultation

with the department of natural resources. The department shall ensure the reporting rules adopted under RCW 70A.15.2200 allow it to develop a comprehensive inventory of emissions of greenhouse gases from all significant sectors of the Washington economy. The report required under this section must be completed by December 31st of each even-numbered year through 2030, and must be completed by December 31st of each year beginning December 31, 2031.

(b) In addition to the report required in (a) of this subsection, by December 31, 2027, and December 31, 2029, the department and the department of commerce shall post and maintain on the department's website and provide notification to the governor and the appropriate committees of the senate and the house of representatives summarizing the total emissions of greenhouse gases for the most recent year for which such data is available, and totals in each major source sector reported as required under (a) of this subsection.

(3) Except for purposes of reporting, emissions of carbon dioxide from industrial combustion of biomass in the form of fuel wood, wood waste, wood by-products, and wood residuals shall not be considered a greenhouse gas as long as the region's silvicultural sequestration capacity is maintained or increased.

19. The intent statement provided in the legislation comprising the statute referenced above is instructive in guiding the Court in this matter and is worth noting in full:

Intent—2020 c 79: (1) Global climate change represents an existential threat to the livelihoods, health, and well-being of all Washingtonians. Our state is experiencing a climate emergency in the form of devastating wildfires, drought, lack of snowpack, and increases in ocean acidification caused in part by climate change.

(2) These threats are not distributed evenly across the state. In particular, rural communities with natural resource-based economies, tribes, and communities of lower and moderate incomes will be disproportionately exposed to health and economic impacts driven by climate change.

(3) The longer we delay in taking definitive action to reduce greenhouse gas emissions, the greater the threat posed by climate change to current and future generations, and the more costly it will be to protect and maintain our communities against the impacts of climate change. Unchecked, climate change will bring ever more drastic decline to the health and prosperity of future generations, particularly for the most vulnerable communities.

(4) According to the climate impacts group at the University of Washington, with global warming of at least one and one-half degrees Celsius, by 2050 Washington is projected to experience:

(a) An increase of sixty-seven percent in the number of days per year above ninety degrees Fahrenheit, relative to 1976-2005, leading to an increased risk of heat-related illness and death, warmer streams, and more frequent algal blooms;

(b) A decrease of thirty-eight percent in the state's snowpack, relative to 1970-1999, leading to reduced water storage, irrigation shortages, and winter and summer recreation losses;

1 (c) An increase of sixteen percent in winter streamflow, relative to 1970-1999,
2 leading to an increased risk of river flooding;

3 (d) A decrease of twenty-three percent in summer streamflow, relative to 1970-
4 1999, leading to reduced summer hydropower, conflicts over water resources, and
5 negative effects on salmon populations; and

6 (e) An increase of one and four-tenths feet in sea level, relative to 1991-2010,
7 leading to coastal flooding and inundation, damage to coastal infrastructure, and
8 bluff erosion.

9 (5) The legislature has taken steps to understand and address the threats posed by
10 climate change as climate change science has continued to evolve. In 2008 with the
11 passage of Engrossed Second Substitute House Bill No. 2815, *chapter 70.235
12 RCW, the legislature acknowledged Washington's history of national and
13 international leadership in clean energy, and set limits on the greenhouse gas
14 emissions that drive climate change.

15 (6) *Chapter 70.235 RCW recognizes that the state of climate change science will
16 continue to evolve, and so it directs the department of ecology to consult with the
17 climate impacts group at the University of Washington for the purpose of issuing
18 periodic reports that summarize the current climate change science and that make
19 recommendations regarding whether the state's greenhouse gas emissions
20 reductions need to be updated. As required by *chapter 70.235 RCW, the
21 department of ecology prepared and submitted reviews of current climate change
22 science and the state of global warming trends in both December 2016, Ecology
23 Publication No. 16-01-010, and again in December 2019, Ecology Publication No.
24 19-02-031. The most recent report underscores the need for Washington to take
immediate and aggressive action to reduce greenhouse gas emissions, the primary
cause of global climate change.

(7) Based on the current science and emissions trends, as reported by the
department of ecology and the climate impacts group at the University of
Washington, the legislature finds that avoiding global warming of at least one and
one-half degrees Celsius is possible only if global greenhouse gas emissions start
to decline precipitously, and as soon as possible. Restoring a safe and stable climate
will require mobilization across all levels of government and economic sectors,
including agriculture, manufacturing, transportation, and energy production, to
reach net zero greenhouse gas emissions by 2050. Washington must therefore
further strengthen its emissions reduction targets for 2030 and beyond. In addition,
all pathways to one and one-half degrees Celsius rely on some amount of negative
emissions through carbon sequestration. It is therefore the intent of the legislature
to strengthen Washington's statutory greenhouse gas emission limits to reflect
current science and to align with the limits that other jurisdictions are setting to
combat climate change and to encourage voluntary actions that increase carbon
sequestration on natural and working lands and storage in the related products from
those lands.

(8) In strengthening Washington's statutory greenhouse gas emission limits, it is the
intent of the legislature to pursue these limits in a way that:

(a) Reduces the burdens and creates benefits for vulnerable populations and highly
impacted communities with long-term and short-term outcomes for public health,

1 economic well-being, local environments, and community resiliency that benefits
2 all Washington residents;

3 (b) Supports the current skilled and trained construction workforce, retains and
4 creates other high quality employment opportunities, and generates broad, widely
5 shared economic benefits for the state and Washington residents; and

6 (c) Maintains Washington's manufacturing economy and avoids leakage of
7 emissions to other jurisdictions." [2020 c 79 s 1.] [emphasis added]

8
9 20. Also revised was RCW 70A.45.005, to read, in relevant part:

10 (1) The legislature finds that Washington has long been a national and international leader
11 on energy conservation and environmental stewardship, including air quality protection,
12 renewable energy development and generation, emission standards for fossil-fuel based
13 energy generation, energy efficiency programs, natural resource conservation, sustainable
14 forestry and the production of forest products, vehicle emission standards, and the use of
15 biofuels. Washington is also unique among most states in that in addition to its commitment
16 to reduce emissions of greenhouse gases, it has established goals to grow the clean energy
17 sector and reduce the state's expenditures on imported fuels.

18 (2) The legislature further finds that Washington should continue its leadership on climate
19 change policy by creating accountability for achieving the emission reductions established
20 in RCW 70A.45.020, participating in the design of a regional multisector market-based
21 system to help achieve those emission reductions, assessing other market strategies to
22 reduce emissions of greenhouse gases, maintaining and enhancing the state's ability to
23 continue to sequester carbon through natural and working lands and forest products, and
24 ensuring the state has a well-trained workforce for our clean energy future. The consistent
tracking and annual reporting of statewide emissions in a greenhouse gas inventory as
required under RCW 70A.45.020 is an important responsibility that allows the legislature
to determine whether state emissions are on a trajectory to achieve statutory emissions
reduction limits, or whether new or amended policy interventions are necessary to achieve
those limits.

21 21. The Report (like all such reports), are *essential* to evaluating whether the particular
22 governmental policies pursued thereby are having a meaningful impact in reducing greenhouse
23 gas emissions, *and* whether the running costs thereof warrant consideration of alternative
24 approaches—*especially* in view of Washington's several recent and ongoing budgetary crises.

25 22. Yet Defendant agencies have often still failed to conform to the reporting deadlines set
26 forth in RCW 70A.45.020. These illegal delays will continue unless and until the Court orders
27 Defendant agencies to produce all data available by each respective statutory deadline, irrespective

1 of whether and to what extent said data has undergone any and/or all of Ecology’s “own”
2 extrastatutory quality assurance and quality control procedures.

3 **V. CAUSES OF ACTION**

4 **A. VIOLATION OF RCW 70A.45.020(2)**

5 23. On December 31, 2024, Defendant agencies failed to comply with RCW 70A.45.020(2),
6 as then-written, when it did not report on the total emissions of greenhouse gases for the preceding
7 two years’ totals in each major source sector, including emissions associated with leaked gas.

8 24. The Report was issued on January 6, 2025. However, the Report still did not comply with
9 the law, as then-written, because it did not include the two preceding years 2022 and 2023, for
10 which there is data available—but instead covers the years 2020 and 2021.

11 25. An earlier lawsuit seeking declaratory and injunctive relief was dismissed upon summary
12 judgment, with the Thurston County Superior Court ruling that the Plaintiff in that case—Todd
13 Myers—lacked individual standing.

14 26. The revised version of RCW 70A.45.020 took effect on July 27, 2025.

15 27. The Report issued on January 6, 2025 is still subject to RCW 70A.45.020 as-written prior
16 to July 27, 2025.

17 28. The Report is *also* subject to RCW 70A.45.020 as-amended and effective beginning July
18 27, 2025.

19 29. As such, the Report *as-issued* must be *revised* with all deliberate speed in order to conform
20 with the statutory mandate that Defendant agencies shall, by December 31st of each even-
21 numbered year submit, to the specified parties and, by function, to stakeholders and the broader
22 public, all available data on emissions of greenhouse gases from the “preceding” two years. *Id.*
23 (pre- and as-revised).

1 30. Further, pursuant to the revised RCW 70A.45.005, Defendants are also now tasked with the
2 “consistent tracking” of statewide emissions, *in addition to* “annual reporting.” *Id.* at (2). The
3 Legislature’s revisions of the “Findings—Intent” section to include “consistent tracking” relate
4 directly and specifically to the new requirement, under RCW 70A.45.020(2), as-revised, that
5 starting in 2027 Defendant agencies “post and maintain” on Commerce’s website the “most recent
6 two years for which such data are available”—*i.e.*, a continuous, rolling requirement to maintain
7 the prior two years of available data, *backdated from any given day*.

8 31. While these rolling reporting requirements do not begin until 2027, their inclusion on an
9 amendment manifests the Legislature’s new particular interest in seeing Defendant agencies
10 publish numbers on a rolling basis, which inevitably entails publication by the deadlines prescribed
11 *as data become available*. Not, as Defendant agencies would suggest, at uncertain post-deadline
12 dates upon which Ecology determines—with apparent reference to internal methodologies—that
13 data *available* for months if not years are now *publishable*. RCW 70A.45.020 does not, nor can it
14 be read to permit publication delays beyond the deadlines prescribed; certainly not on the basis of
15 an extratextual condition.

16 32. Prior to the most recent amendment, the entire Chapter 70A.45 RCW referenced “data”
17 only twice, regarding the inputs for Ecology’s “emissions calculator” and Ecology’s reporting
18 requirements in relation to local government comprehensive plans. *See* RCWs 70A.45.060 and
19 70A.45.120. Likewise, “available” data was only discussed in relation to the latter. *Id.*

20 33. Read together, the above-referenced revisions to RCWs 70A.45.005 and 70A.45.020
21 demonstrate a clear legislative intent to stonecarve the publication of all data on greenhouse
22 emissions that are *available by or on the deadline dates prescribed therein*. *Hallauer v. Spectrum*
23 *Props., Inc.*, 143 Wn.2d 126, 146, 18 P.3d 540 (2001) (where statutes relate to the same subject
24

1 matter, they “are to be read together as constituting a unified whole, to the end that a harmonious,
2 total statutory scheme evolves which maintains the integrity of the respective statutes” (quoting
3 *State v. Wright*, 84 Wn.2d 645, 650, 529 P.2d 453 (1974))). *See also* S.B. 5036, *Senate Bill Report*
4 (2025) (Ex. B) (“Legislative Intent. Codified legislative intent in the CAA is amended to *specify*
5 that the “*consistent tracking* and *annual reporting*” of [greenhouse gas (“GHG”)] emissions in a
6 GHG inventory is an important responsibility that allows the Legislature to determine whether
7 state emissions are on a trajectory to achieve statutory emissions reduction limits, or whether new
8 or amended policy interventions are necessary to achieve those limits.”) (emphases added).

9 34. In light of the foregoing, Defendants were, are, and shall remain, liable under both versions
10 of RCW 70A.45.020, *and* the revised 70A.45.005, until such time as this Court orders, or
11 Defendants voluntarily undertake, production of a new Report with all available data from the
12 preceding two years for which such data are available—here, 2022 and 2023—irrespective of
13 whether Defendant agencies have applied their methodologies in a manner and to an extent that
14 *apparently* meet their own extrastatutory “requirements.”

15 35. Specifically, in earlier litigation Defendant agencies argued that they could not publish
16 their Report until they had analyzed and calculated all available data according to the U.S.
17 Environmental Protection Agency’s (“EPA”) State Inventory Tool (“SIT”), which apparently
18 ensures consistency with the supranational Intergovernmental Panel on Climate Change (“IPCC”)
19 guidelines.

20 36. But nowhere in RCW 70A.45.020 does the Legislature condition timely publication of
21 greenhouse-emissions reports on the application of the SIT methodology made according to IPCC
22 guidelines. The Legislature was aware of the IPCC guidelines and could have referenced them in
23 RCW 70A.45.020 had it so chose. The Legislature *did* reference both federal and IPCC guidelines
24

1 in a *different* provision of the law, pertaining to the calculation of forests and forest-products-sector
2 carbon numbers:

3 *“It is further the policy of the state to utilize carbon accounting land use, land use change, and*
4 *forestry reporting principles consistence with established reporting guidelines, such as those*
5 *used by the intergovernmental panel on climate change and the United States national*
6 *greenhouse gas reporting inventories.”*

7 RCW 70.45.090.

8 37. The Legislature was free to reference federal and IPCC guidelines in outlining what
9 constitutes “available” data with respect to the reports ordered under RCW 70A.45.020. It did not
10 do so.

11 38. Plaintiffs hereby seek the Court’s review and an order finding that the above-referenced
12 actions and inaction are illegal and redressable via declaratory relief under the UDJA and a writ of
13 mandamus *or, in the alternative*, pursuant to RCW 34.05.570(4) of the APA.

14 **VI. RELIEF SOUGHT**

15 **A. DECLARATORY JUDGMENT**

16 39. Plaintiffs reallege the preceding paragraphs and incorporate them by reference in this
17 request for declaratory judgment.

18 40. This is a petition for declaratory judgment action pursuant to Ch. 7.24 of the UDJA.
19 Plaintiffs have rights, status, and other legal relations that are affected by the requirements in RCW
20 70A.45.020(2) and seek to have determined a question of construction or validity arising under the
21 statute and to obtain a declaration of rights, status, or other legal relations thereunder. *See, e.g.,*
22 *Stevens Cnty. v. Stevens Cnty. Sheriff’s Dep’t*, 20 Wash.App.2d 34, 40–41 (citing *Clallam Cnty.*
23 *Deputy Sheriff’s Guild v. Bd. Of Clallam Cnty. Comm’rs*, 92 Wash.2d 844, 848 (1979)). Pursuant
24 to the UDJA, Plaintiffs respectfully ask this Court to declare that Defendant agencies are obligated
to comply with the clear mandatory language in the law and have failed to do so. 70A.45.020(2).

1 41. Defendants have failed to comply with RCW 70A.45.020(2), as-written and/or as-revised.

2 42. Plaintiffs seek to have this Court declare whether the Defendant agencies are obligated to
3 comply with the clear mandatory language in RCW 70A.45.020(2) and RCW 70A.45.005, both
4 as-written and/or as-revised.

5 **B. WRIT OF MANDAMUS**

6 43. Plaintiffs reallege the preceding paragraphs and incorporate them by reference in this
7 request for a writ of mandamus.

8 44. This is a petition for a writ of mandamus. Plaintiffs seek a court order compelling
9 Defendants to perform an act which the law especially enjoins as a duty resulting from an office,
10 trust or station, or to compel the admission of Plaintiffs to the use and enjoyment of a right or
11 office to which Plaintiffs are entitled, and from which the parties are unlawfully precluded by
12 Defendants. There is not a plain, speedy and adequate remedy in the ordinary course of law.

13 45. Plaintiffs seek a writ of mandamus from this Court ordering Defendants to comply with
14 RCW 70A.45.020(2) and replace and/or revise the Report in compliance therewith.

15 **C. ADMINISTRATIVE PROCEDURE ACT (*IN THE ALTERNATIVE*)**

16 46. Plaintiffs reallege the preceding paragraphs and incorporate them by reference in this
17 **alternative** request for redress under the APA.

18 47. **In the alternative**, Plaintiffs claim that Defendants' failure to fulfill their obligations under
19 RCW 70A.45.020(2) is actionable under RCW 34.05.570 of the APA, which provides, in relevant
20 part, that "[a] person whose rights are violated by an agency's failure to perform a duty that is
21 required by law to be performed may file a petition for review pursuant to RCW 34.05.514, seeking
22 an order pursuant to this subsection requiring performance." *Id.* at (4)(b). RCW 7.24.146
23
24

1 (providing that UDJA “does not apply to state agency action reviewable under
2 chapter 34.05 RCW”).

3 Further, under RCW 34.05.570(4)(c), Defendants’ failure to fulfill their obligations under
4 70A.45.020(2) was outside the statutory authority of the agency or the authority conferred by a
5 provision of law; and/or was and is arbitrary and capricious. Namely, Defendants’ action and
6 inaction undermine the law’s public import, the intent behind the law, and foreseeable injuries to
7 Plaintiffs.

8 48. Plaintiffs have no administrative remedies under the APA, and/or such should be treated
9 as exhausted under RCW 34.05.534.

10 **VIII. CONCLUSION**

11 Based upon the foregoing, Plaintiffs respectfully request that the Court:

12 49. Issue an order granting declaratory judgment and ruling that Defendants violated, and
13 continue to violate RCW 70A.45.020(2).

14 50. Issue a writ of mandamus against Defendants, ordering their compliance with RCW
15 70A.45.020(2) to provide a report with emissions numbers from the preceding two years for which
16 data is available (2022 and 2023), in accordance thereto;

17 51. Or, in the alternative, find that Defendants are in violation of the APA, specifically, RCW
18 34.05.570(b) and/or (c), and issue relief consistent therewith.

19 52. Award Plaintiffs all costs incurred in connection with this action, including reasonable
20 attorney’s fees;

21 53. Award any other relief as it deems fair, just, or equitable.

22 DATED this 2nd day of October, 2025.

/s/ Jackson Maynard
JACKSON WILDER MAYNARD, JR.
WSBA No. 43481
CITIZEN ACTION DEFENSE FUND
111 21st Ave SW
Olympia, WA 98501
(850) 519-3495

/s/ Sam Spiegelman
SAM SPIEGELMAN
WSBA No. 58212
CITIZEN ACTION DEFENSE FUND
111 21st Ave SW
Olympia, WA 98501
(201) 314-9505

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Jackson Maynard, hereby declare under penalty of perjury under the laws of the State of Washington that I am causing a true and correct copy of the foregoing Petition for Writ of Mandamus and Declaratory Judgment or, in the Alternative, Petition for Judicial Review under the Administrative Procedure Act to be served via legal messenger on this date to Defendants at:

CASEY SIXKILLER
Director, Washington Department of Ecology
300 Desmond Dr. SE
Lacey, WA 98503
360-407-6000

JOE NGUYEN
Director, Washington Department of Commerce
1011 Plum St. SE
Olympia, WA 98504
360-725-4000

NICK BROWN
Attorney General, State of Washington
1125 Washington St. SE
Olympia, WA 98504
Legal Designee and Counsel for State Defendants

DATED this 2nd day of October, 2025.

/s/ Jackson Maynard
JACKSON WILDER MAYNARD, JR.
WSBA No. 43481
CITIZEN ACTION DEFENSE FUND
111 21st Ave SW
Olympia, WA 98501
(850) 519-3495

Attorney for Plaintiffs

Exhibit A

CERTIFICATION OF ENROLLMENT

SENATE BILL 5036

Chapter 195, Laws of 2025

69th Legislature
2025 Regular Session

GREENHOUSE GAS EMISSIONS DATA—ANNUAL REPORTING

EFFECTIVE DATE: July 27, 2025

Passed by the Senate April 17, 2025
Yeas 30 Nays 19

JOHN LOVICK

President of the Senate

Passed by the House April 10, 2025
Yeas 95 Nays 0

LAURIE JINKINS

**Speaker of the House of
Representatives**

Approved May 2, 2025 10:36 AM

BOB FERGUSON

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5036** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

Secretary

FILED

May 5, 2025

**Secretary of State
State of Washington**

SENATE BILL 5036

AS AMENDED BY THE HOUSE

Passed Legislature - 2025 Regular Session

State of Washington

69th Legislature

2025 Regular Session

By Senators Boehnke, Chapman, Dozier, Fortunato, Harris, Hasegawa, Short, and Wellman

Prefiled 12/13/24. Read first time 01/13/25. Referred to Committee on Environment, Energy & Technology.

1 AN ACT Relating to strengthening Washington's leadership and
2 accountability on climate policy by transitioning to annual reporting
3 of statewide emissions data; amending RCW 70A.45.005 and 70A.65.130;
4 and reenacting and amending RCW 70A.45.020.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 70A.45.005 and 2021 c 316 s 44 are each amended to
7 read as follows:

8 (1) The legislature finds that Washington has long been a
9 national and international leader on energy conservation and
10 environmental stewardship, including air quality protection,
11 renewable energy development and generation, emission standards for
12 fossil-fuel based energy generation, energy efficiency programs,
13 natural resource conservation, sustainable forestry and the
14 production of forest products, vehicle emission standards, and the
15 use of biofuels. Washington is also unique among most states in that
16 in addition to its commitment to reduce emissions of greenhouse
17 gases, it has established goals to grow the clean energy sector and
18 reduce the state's expenditures on imported fuels.

19 (2) The legislature further finds that Washington should continue
20 its leadership on climate change policy by creating accountability
21 for achieving the emission reductions established in RCW 70A.45.020,

1 participating in the design of a regional multisector market-based
2 system to help achieve those emission reductions, assessing other
3 market strategies to reduce emissions of greenhouse gases,
4 maintaining and enhancing the state's ability to continue to
5 sequester carbon through natural and working lands and forest
6 products, and ensuring the state has a well-trained workforce for our
7 clean energy future. The consistent tracking and annual reporting of
8 statewide emissions in a greenhouse gas inventory as required under
9 RCW 70A.45.020 is an important responsibility that allows the
10 legislature to determine whether state emissions are on a trajectory
11 to achieve statutory emissions reduction limits, or whether new or
12 amended policy interventions are necessary to achieve those limits.

13 (3) It is the intent of the legislature that the state will: (a)
14 Limit and reduce emissions of greenhouse gas consistent with the
15 emission reductions established in RCW 70A.45.020; (b) minimize the
16 potential to export pollution, jobs, and economic opportunities; (c)
17 support industry sectors that can act as sequesterers of carbon; and
18 (d) reduce emissions at the lowest cost to Washington's economy,
19 consumers, and businesses.

20 (4) In the event the state elects to participate in a regional
21 multisector market-based system, it is the intent of the legislature
22 that the system will become effective by January 1, 2012, after
23 authority is provided to the department for its implementation. By
24 acting now, Washington businesses and citizens will have adequate
25 time and opportunities to be well positioned to take advantage of the
26 low carbon economy and to make necessary investments in low carbon
27 technology.

28 (5) It is also the intent of the legislature that the regional
29 multisector market-based system recognize Washington's unique
30 emissions and sequestration portfolio, including the:

31 (a) State's hydroelectric system;
32 (b) Opportunities presented by Washington's abundant forest
33 resources and the associated forest products industry, along with
34 aquatic and agriculture land and the associated industries; and
35 (c) State's leadership in energy efficiency and the actions it
36 has already taken that have reduced its generation of greenhouse gas
37 emissions and that entities receive appropriate credit for early
38 actions to reduce greenhouse gases.

39 (6) If any revenues, excluding those from state trust lands, that
40 accrue to the state are created by a market system, they must be used

1 for the purposes established in chapter 70A.65 RCW and to further the
2 state's efforts to achieve the goals established in RCW 70A.45.020,
3 address the impacts of global warming on affected habitats, species,
4 and communities, promote and invest in industry sectors that act as
5 sequesterers of carbon, and increase investment in the clean energy
6 economy particularly for communities and workers that have suffered
7 from heavy job losses and chronic unemployment and underemployment.

8 **Sec. 2.** RCW 70A.45.020 and 2020 c 79 s 2, 2020 c 32 s 4, and
9 2020 c 20 s 1398 are each reenacted and amended to read as follows:

10 (1)(a) The state shall limit anthropogenic emissions of
11 greenhouse gases to achieve the following emission reductions for
12 Washington state:

13 (i) By 2020, reduce overall emissions of greenhouse gases in the
14 state to 1990 levels, or (~~ninety million five hundred thousand~~)
15 90,500,000 metric tons;

16 (ii) By 2030, reduce overall emissions of greenhouse gases in the
17 state to (~~fifty million~~) 50,000,000 metric tons, or (~~forty-five~~)
18 45 percent below 1990 levels;

19 (iii) By 2040, reduce overall emissions of greenhouse gases in
20 the state to (~~twenty-seven million~~) 27,000,000 metric tons, or
21 (~~seventy~~) 70 percent below 1990 levels;

22 (iv) By 2050, reduce overall emissions of greenhouse gases in the
23 state to (~~five million~~) 5,000,000 metric tons, or (~~ninety-five~~)
24 95 percent below 1990 levels.

25 (b) By December 1, 2008, the department shall submit a greenhouse
26 gas reduction plan for review and approval to the legislature,
27 describing those actions necessary to achieve the emission reductions
28 in (a) of this subsection by using existing statutory authority and
29 any additional authority granted by the legislature. Actions taken
30 using existing statutory authority may proceed prior to approval of
31 the greenhouse gas reduction plan.

32 (c) In addition to the emissions limits specified in (a) of this
33 subsection, the state shall also achieve net zero greenhouse gas
34 emissions by 2050. Except where explicitly stated otherwise, nothing
35 in chapter 14, Laws of 2008 limits any state agency authorities as
36 they existed prior to June 12, 2008.

37 (d) Consistent with this directive, the department shall take the
38 following actions:

1 (i) Develop and implement a system for monitoring and reporting
2 emissions of greenhouse gases as required under RCW 70A.15.2200; and

3 (ii) Track progress toward meeting the emission reductions
4 established in this subsection, including the results from policies
5 currently in effect that have been previously adopted by the state
6 and policies adopted in the future, and report on that progress.
7 Progress reporting should include statewide emissions as well as
8 emissions from key sectors of the economy including, but not limited
9 to, electricity, transportation, buildings, manufacturing, and
10 agriculture.

11 (e) Nothing in this section creates any new or additional
12 regulatory authority for any state agency as they existed prior to
13 January 1, 2019.

14 (2) (~~((By December 31st of each even-numbered year beginning in~~
15 ~~2010, the))~~) (a) The department and the department of commerce shall
16 post and maintain on the department's website and report to the
17 governor and the appropriate committees of the senate and house of
18 representatives the total emissions of greenhouse gases for the
19 ((preceding)) most recent two years for which such data are
20 available, and totals in each major source sector, including
21 emissions associated with leaked gas identified by the utilities and
22 transportation commission under RCW 81.88.160. The report must
23 include greenhouse gas emissions from wildfires, developed in
24 consultation with the department of natural resources. The department
25 shall ensure the reporting rules adopted under RCW 70A.15.2200 allow
26 it to develop a comprehensive inventory of emissions of greenhouse
27 gases from all significant sectors of the Washington economy. The
28 report required under this section must be completed by December 31st
29 of each even-numbered year through 2030, and must be completed by
30 December 31st of each year beginning December 31, 2031.

31 (b) In addition to the report required in (a) of this subsection,
32 by December 31, 2027, and December 31, 2029, the department and the
33 department of commerce shall post and maintain on the department's
34 website and provide notification to the governor and the appropriate
35 committees of the senate and the house of representatives summarizing
36 the total emissions of greenhouse gases for the most recent year for
37 which such data is available, and totals in each major source sector
38 reported as required under (a) of this subsection.

39 (3) Except for purposes of reporting, emissions of carbon dioxide
40 from industrial combustion of biomass in the form of fuel wood, wood

waste, wood by-products, and wood residuals shall not be considered a greenhouse gas as long as the region's silvicultural sequestration capacity is maintained or increased.

Sec. 3. RCW 70A.65.130 and 2021 c 316 s 15 are each amended to read as follows:

(1) For the benefit of ratepayers, allowances must be allocated at no cost to covered entities that are natural gas utilities.

(a) By October 1, 2022, the department shall adopt rules, in consultation with the utilities and transportation commission, establishing the methods and procedures for allocating allowances to natural gas utilities. Rules adopted under this subsection must allow for a natural gas utility to be provided allowances at no cost to cover their emissions and decline proportionally with the cap, consistent with RCW 70A.65.070. Allowances allocated at no cost to natural gas utilities must be consigned to auction for the benefit of ratepayers consistent with subsection (2) of this section, deposited for compliance, or a combination of both. The rules adopted by the department pursuant to this section must include provisions directing revenues generated under this subsection to the applicable utilities.

(b) By October 1, 2022, the department shall adopt an allocation schedule by rule, in consultation with the utilities and transportation commission, for the first two compliance periods for the provision of allowances for the benefit of ratepayers at no cost to natural gas utilities.

(c) By October 1, 2028, the department shall adopt an allocation schedule by rule, in consultation with the utilities and transportation commission, for the provision of allowances for the benefit of ratepayers at no cost to natural gas utilities for the compliance periods contained within calendar years 2031 through 2040.

(2)(a) Beginning in 2023, 65 percent of the no cost allowances must be consigned to auction for the benefit of customers, including at a minimum eliminating any additional cost burden to low-income customers from the implementation of this chapter. Rules adopted under this subsection must increase the percentage of allowances consigned to auction by five percent each year until a total of 100 percent is reached.

(b) Revenues from allowances sold at auction must be returned by providing nonvolumetric credits on ratepayer utility bills, prioritizing low-income customers, or used to minimize cost impacts

1 on low-income, residential, and small business customers through
2 actions that include, but are not limited to, weatherization,
3 decarbonization, conservation and efficiency services, and bill
4 assistance. The customer benefits provided from allowances consigned
5 to auction under this section must be in addition to existing
6 requirements in statute, rule, or other legal requirements.

7 (c) Except for low-income customers, the customer bill credits
8 under this subsection are reserved exclusively for customers at
9 locations connected to a natural gas utility's system on July 25,
10 2021. Bill credits may not be provided to customers of the gas
11 utility at a location connected to the system after July 25, 2021.

12 (3) In order to qualify for no cost allowances, covered entities
13 that are natural gas utilities must provide copies of their
14 greenhouse gas emissions reports filed with the United States
15 environmental protection agency under 40 C.F.R. Part 98 subpart NN -
16 suppliers of natural gas and natural gas liquids for calendar years
17 2015 through 2021 to the department on or before March 31, 2022. The
18 copies of the reports must be provided in electronic form to the
19 department, in a manner prescribed by the department. The reports
20 must be complete and contain all information required by 40 C.F.R.
21 Sec. 98.406 including, but not limited to, information on large end
22 users served by the natural gas utility. For any year where a natural
23 gas utility was not required to file this report with the United
24 States environmental protection agency, a report may be submitted in
25 a manner prescribed by the department containing all of the
26 information required in the subpart NN report.

27 (4) To ~~((continue receiving))~~ receive no cost allowances, a
28 natural gas utility must provide to the department ~~((the United~~
29 ~~States environmental protection agency subpart NN greenhouse gas~~
30 ~~emissions report for each reporting year in the manner and by the~~
31 ~~dates provided))~~ an annual greenhouse gas emissions report as
32 required by RCW 70A.15.2200(5) ~~((as part of the greenhouse gas~~
33 ~~reporting requirements of this chapter))~~.

Passed by the Senate April 17, 2025.

Passed by the House April 10, 2025.

Approved by the Governor May 2, 2025.

Filed in Office of Secretary of State May 5, 2025.

--- END ---

Exhibit B

FINAL BILL REPORT

SB 5036

C 195 L 25
Synopsis as Enacted

Brief Description: Strengthening Washington's leadership and accountability on climate policy by transitioning to annual reporting of statewide emissions data.

Sponsors: Senators Boehnke, Chapman, Dozier, Fortunato, Harris, Hasegawa, Short and Wellman.

Senate Committee on Environment, Energy & Technology

Senate Committee on Ways & Means

House Committee on Environment & Energy

House Committee on Appropriations

Background: Greenhouse Gases. Gases that trap heat in the Earth's atmosphere are called greenhouse gases (GHGs). GHGs include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and several other gases identified by the Department of Ecology (Ecology). Global warming potential (GWP) is used as a method to compare one GHG's capacity to trap heat in the atmosphere with that of another. GWP is measured as a function of how much of the gas is concentrated in the atmosphere, how long the gas stays there, and how strongly the particular gas affects global atmospheric temperatures. Under state law, the GWP of GHGs are measured in terms of their equivalence to the emission of an identical volume of carbon dioxide over a 100-year timeframe.

Greenhouse Gas Reporting by Certain Entities. Entities emitting more than 10,000 metric tons of carbon dioxide equivalent of total GHG emissions per year in Washington must annually report their emissions to Ecology. Some of these entities must have their reports verified by a third party. Certain fuel suppliers and electric power entities with emissions exceeding the 10,000 metric tons of carbon dioxide equivalent threshold must also report to Ecology.

Natural gas utilities receive no-cost allowances under the Climate Commitment Act's Cap-and-Invest Program (CCA), subject to certain conditions and in accordance with a specified

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

allocation schedule. To continue receiving no-cost allowances in the CCA, a natural gas utility must provide to Ecology a GHG emissions report also submitted to the United States Environmental Protection Agency (EPA).

Greenhouse Gas Inventory Reporting. The Washington GHG inventory is a historical record of GHG emissions in the state. It estimates statewide emissions and measures reductions compared to a 1990 baseline. In 2020, Washington updated its GHG emission limits. The next requirement applies in 2030, where the state must reduce human-caused GHG emissions to 50 million metric tons or 45 percent below 1990 levels. There are separate, specific GHG emission limits for state agencies. Ecology administers several programs aimed at reducing GHG emissions, such as the CCA, the Clean Fuels Program, and the Refrigerant Management Program.

State law requires Ecology and the Washington State Department of Commerce (Commerce) to report to the Governor and Legislature on the total emissions of GHGs for the preceding two years. The inventory report must include totals in each major source sector, including emissions associated with leaked gas and GHG emissions from wildfires. Emissions from wood biomass, ethanol, and biodiesel consumption are excluded from the inventory report.

In January 2025, Ecology released its 2024 inventory report. The inventory is developed using a tool and data from EPA, which is current through 2021. Ecology supplements and replaces default data in EPA's reporting tool for the analysis of electricity consumption, natural gas leakage, and wildfires. The 2024 inventory report data predates the effective dates of the CCA, the Clean Fuels Program, zero-emission vehicle standards, some fluorinated gas regulations, and clean buildings regulations. Ecology notes that, while the inventory report will always be retrospective, it is pursuing strategies to decrease the lag between the data contained in each report and the date of publication.

Summary: Greenhouse Gas Inventory Reporting. Ecology and Commerce must post and maintain on Ecology's website, and report to the Governor and the Legislature, the total GHG emissions for the most recent two years for which data are available. The report must be completed by December 31st of each even-numbered year through 2030, and must be completed by December 31st of each year beginning in 2031.

In addition to the biennial report required in 2026-2030, by December 31, 2027, and December 31, 2029, Ecology and Commerce must post and maintain a summary of the total GHG emissions for the most recent year for which data are available, and the totals in each major source sector.

Greenhouse Gas Reporting by Certain Entities. Natural gas utilities must submit to Ecology an annual GHG emissions report required under the Washington Clean Air Act (CAA) to receive no-cost allowances in the CCA.

Legislative Intent. Codified legislative intent in the CAA is amended to specify that the consistent tracking and annual reporting of GHG emissions in a GHG inventory is an important responsibility that allows the Legislature to determine whether state emissions are on a trajectory to achieve statutory emissions reduction limits, or whether new or amended policy interventions are necessary to achieve those limits.

Votes on Final Passage:

Senate	49	0	
House	95	0	(House amended)
Senate	30	19	(Senate concurred)

Effective: July 27, 2025

Exhibit C

- ☐ Expedite
☒ No hearing set
☐ Hearing is set

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY**

STATE SENATOR NIKKI TORRES, in Her
Official Capacity; STATE REPRESENTATIVE
MARY DYE, in Her Official Capacity;
WASHINGTON POLICY CENTER, a nonprofit
corporation; and TODD MYERS,

Plaintiffs,

v.

WASHINGTON DEPARTMENT OF ECOLOGY
and WASHINGTON DEPARTMENT OF
COMMERCE, agencies of the State of
Washington,

Defendants.

No.

**JOINT DECLARATION OF
PLAINTIFFS WASHINGTON POLICY
CENTER AND JAMES TODD MYERS
IN SUPPORT OF PETITION FOR
WRIT OF MANDAMUS AND
DECLARATORY JUDGMENT, OR IN
THE ALTERNATIVE, PETITION FOR
JUDICIAL REVIEW UNDER THE
ADMINISTRATIVE PROCEDURE
ACT**

1. I, Todd Myers, am the Executive Director of Environmental Policy at the Washington Policy Center (“WPC”). I have served in this and other WPC capacities for nearly two (2) decades. During this time, WPC and I have worked vigorously to distill current and proposed policies for public consumption and to support state lawmakers seeking deeper knowledge of various subject-areas, including environmental law and climate-change projects.

2. For more than three (3) decades, WPC has played a significant role in the political and policy landscape of Washington State. WPC’s work reaches the eyes and ears of tens of thousands of Washington consumers, voters, taxpayers, commuters, and officeholders across the municipal, county, and statewide levels.

1 3. Defendant agencies currently have access to the federal data necessary to publish 2022
2 and 2023 greenhouse-emission numbers, even if noted as preliminary or subject to adjustment.

3 4. Defendant agencies' prompt publication of greenhouse-emissions numbers is essential to
4 permitting myself and WPC to analyze results and translate their findings to lawmakers *before*
5 the legislative session begins or reaches full throttle. Additionally, numerous state agencies are
6 making decisions about regulation, subsidies, and operations that impact state emissions. WPC
7 routinely analyzes these policies in context of state climate goals. Even a six-day (6) delay—but,
8 more accurately, a year-plus delay—thus causes me and WPC irreparable harm that continues
worsening each day publication is delayed.

9 5. Defendant agencies' consistent failure to release data on time deprives legislators and
10 their staff of the information necessary to make informed decisions regarding effective climate
11 policy.

12 6. Defendant agencies argue they cannot complete the state Greenhouse Gas Inventory
13 without data the EPA's State Inventory Tool ("SIT"). In the Washington State Greenhouse Gas
14 Emissions Inventory: 1990-2021, the Department of Ecology notes that "Data for the SIT come
15 from the EPA's Inventory of U.S. Greenhouse Gas Emissions and Sinks." The data for both 2022
and 2023 have been available for many months.

16 7. **In April 2024, Defendant agencies had all state data on carbon emissions for 2022**
17 **from the EPA.** [https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-](https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2022)
18 [sinks-1990-2022](https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2022). **All state emissions data from the EPA for 2023 were available in May 2025.**
19 <https://www.edf.org/freedom-information-act-documents-epas-greenhouse-gas-inventory>.

20 Defendant agencies have thus had 17 months since the EPA released complete data for 2022.
21 EPA data for 2023, meanwhile, was made public more than four months ago.

22 8. The most recent greenhouse-emission report from the Department of Ecology mentions
23 that methodology changes and that they go back and correct old data. For example, it notes,
24 "Greenhouse gas inventory tools undergo iterative and incremental adjustments in methodology
as we apply new, more accurate analytical approaches to the complete range of historical data."

1 <https://apps.ecology.wa.gov/publications/documents/2414077.pdf>. The notion that they must
2 wait years to publish EPA and other data because the numbers might be subject to minor revision
3 is contradicted by the fact that they routinely go back and change the data. Their claims about
4 quality control assume a level of precision that is false and is contradicted by their own reports.
5 They have to prove why the errors involved in publishing without their “quality control” are
6 meaningful given that they routinely publish data that they know will be revised.
7 <https://apps.ecology.wa.gov/publications/documents/2414077.pdf>.

8 9. The claim that Ecology staff need more time to check data from the federal government
9 is contradicted by their own previous timelines. For example, Washington's 2018 emissions data
10 was released at the end of 2020 ([Turning the corner - Washington State Department of Ecology](#)),
11 two years later. The 2019 emissions data was released at the end of 2022 ([Dec. 28 - 2019 State
GHG Inventory - Washington State Department of Ecology](#)), three years later, due in part to
12 COVID delays. Ecology says, "The next inventory will be published by December 2026 and
13 include data through 2023" ([Greenhouse gas inventories - Washington State Department of
Ecology](#)). That means 2022 data would be released 47 months after the end of that year. The only
14 lag that has been that long is for the 2020 data due to COVID. There is no justification for taking
15 four years to release data - something that has only occurred in recent years due to COVID and is
16 twice as long as it took just prior to COVID.

17
18 DATED this the 2nd day of October, 2025.

19 /s/ James Todd Myers
20 James Todd Myers
21 *On behalf of himself and WPC*
22
23
24

EXHIBIT 3

HOUSE BILL REPORT

SB 5036

As Passed House - Amended:

April 10, 2025

Title: An act relating to strengthening Washington's leadership and accountability on climate policy by transitioning to annual reporting of statewide emissions data.

Brief Description: Strengthening Washington's leadership and accountability on climate policy by transitioning to annual reporting of statewide emissions data.

Sponsors: Senators Boehnke, Chapman, Dozier, Fortunato, Harris, Hasegawa, Short and Wellman.

Brief History:

Committee Activity:

Environment & Energy: 3/20/25, 3/31/25 [DPA];

Appropriations: 4/5/25, 4/8/25 [DPA(ENVI)].

Floor Activity:

Passed House: 4/10/25, 95-0.

Brief Summary of Bill (As Amended by House)

- Amends greenhouse gas (GHG) emission inventory reporting requirements, including by increasing the frequency of reports and by specifying that the reports must cover the most recent years for which data is available.
- Requires natural gas utilities to report GHG emissions to the Department of Ecology in the manner specified in the state Clean Air Act, rather than under federal regulations, in order to receive no-cost allowances under the Climate Commitment Act.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass as amended. Signed by 19 members: Representatives Doglio, Chair; Hunt, Vice Chair; Dye, Ranking Minority Member; Klicker, Assistant Ranking Member; Abell, Barnard, Berry, Duerr, Fey, Fitzgibbon, Kloba, Ley, Mena, Mendoza, Ramel, Stearns, Street, Wylie and Ybarra.

Minority Report: Without recommendation. Signed by 2 members: Representatives Abbarno and Stuebe.

Staff: Jacob Lipson (786-7196).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Environment & Energy. Signed by 31 members: Representatives Ormsby, Chair; Gregerson, Vice Chair; Macri, Vice Chair; Couture, Ranking Minority Member; Connors, Assistant Ranking Minority Member; Penner, Assistant Ranking Minority Member; Schmick, Assistant Ranking Minority Member; Berg, Bergquist, Burnett, Caldier, Callan, Corry, Cortes, Doglio, Dye, Fitzgibbon, Keaton, Leavitt, Lekanoff, Manjarrez, Marshall, Peterson, Pollet, Rude, Ryu, Springer, Stonier, Street, Thai and Tharinger.

Staff: Dan Jones (786-7118).

Background:

State Emission Limits.

The United States Environmental Protection Agency (EPA) and the Department of Ecology (Ecology) identify carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride as greenhouse gases (GHGs) because of their capacity to trap heat in the Earth's atmosphere. According to the EPA, the global warming potential (GWP) of each GHG is a function of how much of the gas is concentrated in the atmosphere, how long the gas stays in the atmosphere, and how strongly the particular gas affects global atmospheric temperatures. Under state law, the GWP of a gas is measured in terms of the equivalence to the emission of an identical volume of carbon dioxide over a 100-year timeframe (carbon dioxide equivalent or CO₂e).

Since 2008 state law has established limits on the emission of GHGs in Washington. Ecology is responsible for monitoring and tracking the state's progress in achieving these emissions limits. In 2020 additional legislation was enacted to update the statewide emissions limits to the following:

- by 2020, reduce overall emissions of GHGs in the state to 1990 levels, or 90.5 million metric tons of carbon dioxide equivalents (MMT CO₂e);
- by 2030, reduce overall emissions of GHGs in the state to 45 percent below 1990 levels, or 50 MMT CO₂e;
- by 2040, reduce overall emissions of GHGs in the state to 70 percent below 1990

- levels, or 27 MMT CO₂e; and
- by 2050, reduce overall emissions of GHGs in the state to 95 percent below 1990 levels, or 5 MMT CO₂e, and achieve net-zero GHG emissions.

The law establishing state emission limits includes various codified legislative findings and statements of intent. One such legislative finding is that Washington should continue its leadership on climate change policy by creating accountability for achieving the emissions reductions established in the statewide emission limits.

Greenhouse Gas Emission Reporting by Sources of Emissions.

Under the federal Clean Air Act, GHGs are regulated as an air pollutant and are subject to several air regulations administered by the EPA. These federal Clean Air Act regulations include a requirement that facilities and fuel suppliers whose associated annual emissions exceed 25,000 metric tons of CO₂e report their emissions to the EPA. At the state level, GHG reporting is regulated by Ecology under the state Clean Air Act. This state law requires facilities and fuel suppliers whose emissions exceed 10,000 metric tons of CO₂e each year to report their annual emissions to Ecology. As a result of legislation enacted in 2024, Ecology's rules may also require electric power entities to report GHG emissions from all electricity sold, imported, exported, or exchanged in Washington.

State Greenhouse Gas Emissions Inventory.

By December 31 of even-numbered years, Ecology and the Department of Commerce (Commerce) must report to the Governor and the appropriate committees of the Legislature the total emissions of GHGs for the preceding two years, and totals in each major source sector (Greenhouse Gas Inventory). The most recent Greenhouse Gas Inventory was published in January of 2025, and reported emissions from 1990 through calendar year 2021. The next Greenhouse Gas Inventory is scheduled to be published by December 1, 2026; Ecology has stated it will include data through calendar year 2023.

Climate Commitment Act.

Under the 2021 Climate Commitment Act (CCA), in order to ensure that GHG emissions are reduced consistently with the state's 2030, 2040, and 2050 emissions limits, Ecology must implement a cap on GHG emissions from covered entities. Ecology must also implement a program to track, verify, and enforce compliance through the use of compliance instruments, which include allowances or eligible offset credits. The Cap-and-Invest Program (Program) commenced on January 1, 2023.

The Program:

- establishes annual allowance budgets that limit emissions from covered entities;
- defines those entities covered by the Program (covered entities), those entities that may voluntarily opt into coverage under the Program (opt-in entities), and other persons that participate in auctions or allowance markets by purchasing, holding, selling, or voluntarily retiring compliance instruments (general market participants);
- provides for the distribution of emissions allowances at no cost to certain covered

- entities, or by purchase at auction;
- provides for offset credits as a method for meeting compliance obligations;
- defines the compliance obligations of covered entities;
- provides for the transfer of allowances and recognition of compliance instruments, including those issued by jurisdictions with which Washington may have linkage agreements in the future; and
- provides monitoring and oversight of the sale and transfer of allowances.

Natural gas utilities with qualifying levels of emissions are among those entities required to comply with the CCA beginning in the first compliance period (2023 through 2026). Ecology rules adopted to implement the CCA, establish the methods and procedures for allocating allowances to natural gas utilities at no cost during the first and second compliance periods. Ecology's rules provide that, relative to a baseline level of emissions set based on calendar year 2015 to 2019 emissions data, Ecology distributes no-cost allowances to natural gas utilities equal to 93 percent of baseline emission levels in 2023, declining by an additional 7 percent each year until 2030. From 2031 to 2042, the rate of decline of no-cost allowances relative to baseline levels decreases by 1.8 percent each year. Further no-cost allowance allocation rate decreases are prescribed for years 2043 through 2049.

Beginning in 2023, 65 percent of the no-cost allowances allocated to natural gas utilities must be consigned to auction for the benefit of customers, including at a minimum eliminating any additional cost burden to low-income customers from the implementation of the Program. Rules adopted by Ecology increase the percentage of allowances consigned to auction by 5 percent each year until a total of 100 percent is reached. Revenues from allowances consigned to sale at auction must be returned to the utility's customers by providing nonvolumetric credits on ratepayer utility bills, prioritizing low-income customers, or being used to minimize cost impacts on low-income, residential, and small business customers through activities such as weatherization and bill assistance.

In order to receive no-cost allowances, natural gas utilities were required to provide copies of their GHG emission reports filed with the EPA for 2015 through 2021. To continue receiving no-cost allowances, natural gas utilities must provide their annual GHG emission reports filed with the EPA.

Summary of Amended Bill:

By December 31, 2027, and December 1, 2029, Ecology and Commerce must post and maintain on Ecology's website, and notify the governor and the Legislature, of a summary of total GHG emissions for the most recent year data is available.

Beginning December 31, 2031, the biennial GHG inventory report becomes an annual GHG inventory report. Ecology must post and maintain the GHG inventory report on its website. The GHG inventory report must address the most recent two years for which GHG data is

available, rather than the preceding two years.

The legislative findings regarding state emission reduction requirements are expanded to state that consistent tracking and annual reporting of statewide GHG emissions is an important responsibility that allows the Legislature to determine the state emissions trajectory and make policy interventions.

To receive no-cost allowances under the CCA, a natural gas utility must provide Ecology an annual GHG emissions report as required by the state Clean Air Act, rather than the GHG emissions report provided to the EPA.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Environment & Energy):

(In support) Allowing the Legislature and policymakers to have access to timely data on GHG emissions will enable better policy decisions. Currently, the 2025 GHG inventory report contains data from 2021. Businesses and regulators need to know in a timely way if climate policies like the Climate Commitment Act and Clean Fuels Program are working, and will allow for more efficient and effective policy. Washington GHG emissions are not currently on track to meet 2030 state emission limits, but it will take years to know whether state limits have actually been achieved.

(Opposed) None.

(Other) This bill will increase the frequency of the publication of the GHG inventory, requiring annual publication of a report that is currently published every other year.

Staff Summary of Public Testimony (Appropriations):

(In support) King 5 News reported that greenhouse gas emissions were going up rather than decreasing, despite the multiple climate policies that have passed. Having more data is important to understand the results of different climate policies, and is worth the fiscal impact.

(Opposed) None.

Persons Testifying (Environment & Energy): (In support) Senator Matt Boehnke, prime sponsor; Todd Myers, Washington Policy Center; Keira Domer; and Dakota Manley,

Washington state young republicans.

(Other) Joel Creswell, Washington State Department of Ecology.

Persons Testifying (Appropriations): Anthony Mixer, Washington State Young Republicans.

Persons Signed In To Testify But Not Testifying (Environment & Energy): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.